

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE (MURDER) NO. E014 OF 2023

REPUBLIC

PROSECUTION

VERSUS

JOHN OTIENO.....1ST

ACCUSED

ABRAHAM OMONDI.....2ND

ACCUSED

RULING ON SENTENCE

1. The accused persons herein **John Otieno** and **Abraham Omondi** have been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. However, following a plea bargain agreement dated 29th July 2025, the charge of murder was substituted with a charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The accused persons pleaded guilty to the charge and facts and were each convicted accordingly.
2. The sentencing hearing proceeded on 7th October 2025. M/s Akinyi counsel for both accused submitted inter alia; that the accused persons are first offenders; that they are very remorseful; that there was no premeditation in the matter; that they are sole bread winners for their families; that they are youthful and have potential for reform; that they seek for leniency and non-custodial sentences.
3. Counsel for Prosecution Mr. Soita submitted inter alia; that the accused persons are persons whose characters are not liked in the community and that their lives are at risk since the members of public and community are still bitter about their conduct and who are ready to lynch them once they set

foot in the village; that the accused persons murdered an innocent man; that custodial sentences are suitable in the circumstances.

4. This court called for a pre-sentence report by the probation department. The same are dated 29th September 2025. The same indicate inter alia; that the accused persons herein had gone to search the victim's house as the victim had been alleged to have stolen their items namely woofer, solar panel and a bed; that while they were in the house of the victim, the victim who was armed with a panga attempted to repulse them but unfortunately he fell down outside the door whereupon the two accused descended on him by cutting him using the panga; that the accused persons maintain that they were going to look for their stolen property and had no intention of killing the victim; that the family of the victim is still bitter for the loss of their kin and feel that their kin was killed for no apparent reason since the alleged stolen items were never recovered from his house; that the area Assistant Chief indicates that the victim was an innocent man because the real culprit was a brother of the victim; that the people on the ground are still not happy with what the offender did

and have maintained that they will lynch the accused persons if they set foot in the village and that the family of the accused pray for a non-custodial sentence for the accused persons.

5. I have considered the mitigating submissions by both learned counsels for the parties herein. I have also considered the pre-sentence report filed by the probation department. Under Section 205 of the Penal Code, the maximum sentence for manslaughter is life imprisonment. However, following the decision of the Supreme Court in **Francis Karioko Muruatetu & 2 Others (2017) eKLR**, the mandatory nature of sentence was declared as unconstitutional and that the courts should receive mitigating circumstances from the offender before imposing an appropriate sentence thereafter.

6. As regards the sentence to be imposed, the Court of Appeal in the case of **Charo Ngumbao Gugudu Vs. R (2011) eKLR**, held as follows:

“Further, the law is that sentence imposed on an accused person must be commensurate to

*the moral blameworthiness of the offender and that it is thus not proper exercise for the court to fail to look at the facts and circumstances of the case in their entirety before settling for any given sentence. **See Ambani Vs. R (1990) eKLR.***

7. From the autopsy report dated 5th May 2023 by Dr. Bruno Okal of Yala Sub-County Hospital, the deceased died of severe brain injury coupled with cardio-respiratory failure due to hemorrhagic shock due to assault with a sharp object. The injuries sustained therefore were very severe that did not give the deceased a chance of survival. It is noted that the accused persons herein stormed the home of the deceased in search of alleged stolen items which in fact were never recovered and cut the deceased all over the body with machetes and thereafter left him for dead. The area Assistant Chief has maintained that the accused persons killed an innocent man since the proper suspect of the alleged theft is a brother to the deceased. It would appear therefore that had the accused persons taken time to investigate the matter, the deceased could be alive today. The deceased therefore lost his life thanks to the conduct of

the accused persons in acting in haste and a gung-ho manner. The deceased therefore did not deserve to die in the manner he did. The accused persons have been indicated by the probation officer to be unwanted in the area for killing the deceased and that members of public are still bitter and likely to lynch them once they set foot in the area. Already, the parents of both accused have since moved from the area and relocated elsewhere due to the hostility on the ground. It is noted that both accused persons are still in their prime and have a long life ahead of them. Their youthful energies should be geared towards uplifting their lot. However, the circumstances herein have shown that they are persons who are not ready to utilize their youthful life positively. I find that they require a comprehensive custodial rehabilitation before they can be released back in the society.

8. It is noted that the accused persons did not manage to post bail and therefore remained in custody throughout their trial. The period spent in custody must be taken into consideration during the sentencing in line with the provisions of Section 333(2) of the Criminal Procedure Code. The accused persons

were arrested on 25th April 2023 and therefore the sentences to be imposed shall commence from that date. The court also take note of the fact that the accused persons have entered into a plea bargain and therefore they have assisted the court by saving the precious judicial time which could have been used in the conclusion of the matter. This will be taken into account during sentencing. I find that sentence of fifteen (15) years' imprisonment is reasonable to enable the accused persons to undergo comprehensive rehabilitation before being re-integrated back to the society.

9. In the result, I order the accused persons herein **John Otieno** and **Abraham Omondi** to each serve a sentence of fifteen (15) years' imprisonment from the date of arrest namely 25th April 2023.

Orders accordingly.

Dated and delivered at Siaya this 14th Day of October 2025.

D. KEMEI
JUDGE

In the presence of:

John Otieno.....1st Accused

Abraham Omondi.....2nd Accused

M/s Akinyi.....for both Accused

Soita.....for Prosecution

Maureen.....Court Assistant