



REPUBLIC OF KENYA



**KENYA LAW**  
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**State v Otieno (Criminal Case E005 of 2023)  
[2025] KEHC 14280 (KLR) (14 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14280 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL CASE E005 OF 2023**

**DK KEMEL, J**

**OCTOBER 14, 2025**

**BETWEEN**

**STATE ..... PROSECUTION**

**AND**

**FREDRICK OMONDI OTIENO ..... ACCUSED**

**RULING**

1. The accused herein Fredrick Omondi Otieno has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on the 23<sup>rd</sup> February 2023 at around 2000 hrs in Mungao village, Mungao Sub-Location in Ugunja Sub-County within Siaya County murdered one Pascal Omondi. However, following a plea bargain agreement 29<sup>th</sup> 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 pleaded guilty to the charge and facts and was convicted accordingly.
2. The sentencing hearing proceeded on 7<sup>th</sup> October 2025. M/s Akinyi, counsel for the accused, submitted inter alia; that the accused is a first offender; that he is remorseful; that he is a young offender and has potential for reform; that he prays for non-custodial sentence; that he needs medical attention and further requests for leniency and that there was no premeditation leading to the offence.
3. Counsel for Prosecution Mr. Soita submitted inter alia; that deceased died a brutal death; that he seeks for a custodial sentence to enable accused be rehabilitated.
4. This court called for a pre-sentence report by the probation department. The same is dated 29<sup>th</sup> September 2025. The same indicates inter alia; the accused was brought up in a polygamous family; that he attained is basic education; that the offender was a casual labourer; that the deceased was a step brother to the offender; that the offender has a young family with two young children; that on the fateful day, he had gone home and found his mother quarrelling with the deceased over money which



was stolen in her bedroom; that he then took a plastic water pipe that was on the table and used it to cane the deceased on the back and waist; that he then ordered the deceased to go and get food from the kitchen; that while in the kitchen, the victim collapsed and died; that the offender went and informed the paternal uncle as well as the village elder who live next to their home and who called police officers from Ugunja; that the police officers arrested him and later charged him with the offence; that the offender is remorseful and prays for non-custodial sentence as he was the only son born of his mother and the sole bread winner of his young family; that he prays to be given opportunity to go and bring back his wife and children who quit the marriage after his arrest and be able to take care of them; that he be placed on non-custodial sentence so that he can go and seek proper medical attention for a swelling on his wrist which keeps increasing. That the victim died after being caned by the offender; that the offender's mother who was the step mother to the victim is very sorry about the incident and stated that she had been living with all the children without any problem; that it is unfortunate that the victim died as a result of the correction which was administered on him by his step brother; that the offender was very helpful at home and sole bread winner of his family before the arrest.

That the local administration and the community members are not opposed to the offender being handed non-custodial sentence as they had no problem with him before and that it was unfortunate that the offender's action led to the death of his brother; that the community members talk well of him and are ready to receive him back home and help him settle down; that he has never been in conflict with the law except in this matter.

5. I have considered the mitigating submissions by both learned counsels for the parties herein. I have also considered the pre-sentence reports 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 v 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 v R (1990) eKLR*.”

It is noted from the autopsy report conducted on 2/3/2023 by Dr. Tony Kinja of Ambira Level 4 Hospital indicated that the cause of death was excessive hemorrhage due to rupture of spleen and liver following assault by a blunt object. It is therefore clear that the injuries sustained by the deceased were severe that they did not give him a chance to survive. It is also clear that the caning inflicted by the accused on the young minor was excessive in the circumstances because it appeared that the accused did not consider that the victim was a minor and who required a lenient punishment but went ahead to viciously use a plastic water pipe as it he was attacking a snake. The assault weapon mainly targeted sensitive parts of the body such as liver and spleen. It transpired from the evidence that the deceased was being punished for the first time as he had not been a habitual thief hence he deserved to be given a chance to reform. Even though the presentence report is in favour of a non-custodial sentence as the community appeared to have a soft spot for the accuse, it is noted that the accused seems to have an ungovernable anger which requires that he undergoes some rehabilitation where the issue of his anger management can be addressed. It is noted that the accused has been in custody for about 2 ½ years from the time of his arrest to-date and that he is deemed to have somewhat atoned for his sins. It is also



noted that the accused has been indicated to be suffering from some malignant swelling on his wrist which requires proper medication. I find that the period that he has been in custody has been sufficient rehabilitation and that the accused now requires to undergo a non-custodial sentence whereby the Probation Department will handle his anger related management issues. It is also noted that the accused is remorseful for having killed his own brother when he over zealously disciplined him. It is believed that the accused will live with this guilt the rest of his life. I find that the accused herein merits a non-custodial sentence in the circumstances.

7. In the result, I order the accused herein Fredrick Omondi Otieno to serve under Probation for a period of three (3) years.

Orders accordingly.

**DATED AND DELIVERED AT SIAYA THIS 14<sup>TH</sup> DAY OF OCTOBER 2025.**

**D. KEMEI**

**JUDGE.**

In the presence of:

Fredrick Omondi Otieno.....Accused

M/s Akinyi.....for Accused

Soita.....for Prosecution

Maureen.....Court Assistant

