



**Republic v Owino (Criminal Case E012 of 2023)
[2025] KEHC 16170 (KLR) (11 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16170 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E012 OF 2023**

**DK KEMEL, J
NOVEMBER 11, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

FELIX CHARLES OWINO ACCUSED

RULING

1. The accused herein Felix Charles Owino has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge are that on 17/4/2022 at Simur sub-location in Ugunja Sub County within Siaya County, he murdered Rayden Ooko. Vide the judgment of this court dated 28/10/2025, the accused was found guilty for the offence of murder under Section 203 as read with Section 204 of the Penal Code and was convicted therefor accordingly.
2. The sentencing hearing proceeded on 4/11/2025. Mr. Nyaberi for the defence submitted regarding the accused inter alia; that the accused herein prays for mercy and leniency since he has for the last fifty six (56) years been preaching love, mercy and empathy; that the accused has love for children and prays for forgiveness; that the accused has demonstrated genuine remorse, depicted by his behavior after the incident when he reached out to the family and sought for pardon and went ahead to assist the family with compensation which was pursuant to the need for restorative justice; that on page five of the pre-sentence report indicates that the accused sought for pardon from the family of the deceased; that the accused later accepted his actions during plea taking; that he has even informed his counsel that he committed the offence; that his defence has been that he did not have the right mental status at the time; that he sought pardon from those concerned as captured in the report; that the father of the victim has accepted the apology from the accused and that accused believes that God has already forgiven him; that the accused cooperated well in the trial; that the sentencing policy guideline 2023 directs the court to grant leniency to parties before court who cooperate fully with the court; that accused adhered to the bond conditions; that there are exceptional circumstances; that the accused



currently turns sixty (60) years old and that the court should consider that he suffers psychiatric illness and attends several hospitals over his condition and that if stopped this will endanger his life; that he also suffers from other ailments as outlined in the pre-sentence report; that he urges the court to impose a non-custodial sentence which will enable him secure his medication; that the accused is a priest and in charge of several projects and takes care of other vulnerable persons who rely on him for food, shelter and daily provisions; that the court should emphasize on the principle of restorative justice; that the victim and society has forgiven him and thus this court should give him a non-custodial sentence; that the recommendation by the probation officer on the pre-sentence report should guide the court during the sentencing; that he will abide by the terms to be issued by the court and that he is remorseful.

3. Mr. Soita for the prosecution submitted inter alia; that this court has rendered itself vide its judgment dated 28/10/2025; that he has perused the pre-sentence report and relies on the judgment of the court.
4. Ms Okinyo Ronald, counsel for the victim submitted inter alia; that the victims have been vocal on their intention to withdraw the case; that they were after restorative justice as opposed to retributive justice; that the families had agreed to forgive each other as they were under the impression that the accused did not plan to kill the deceased; that he seeks for non-custodial sentence; that the behavior of the accused all along is one of remorsefulness and seeks to reconcile with the victim's family; that there is no bad blood at the moment and that both parties are ready to co-exist peacefully and that the pre-sentence report is comprehensive.
5. This court called for a pre-sentence reports by the Probation department. The same is dated 31/9/2025. The same indicates inter alia; that the accused was brought up in a Christian family; that he attended his A level exam in 1985 and later joined Philosophy class for three years after which he proceeded to USA to study Masters in Philosophy and then PHD in Philosophy; that he as well taught part time at the same University he studied; that he secured employment and whose salary was remitted to Kenya to help other priests pursue studies; that upon return to Kenya, he was posted as a lecturer to Apostle of Jesus Seminary in Nairobi where he has been teaching to date and that on Sunday he conducts mass in different churches; that the offenders has health problems since childhood; that he was afraid to talk even in class and whenever he was asked a question such that even when he knew the answer he could only write it down and give his colleagues to read; that whenever he was called upon to read or pray he could shake to the extent that he would not utter even a single word; that he used to tell his father about the anxious moments in his life but his father would only dismiss him and tell him to behave as a man; that his condition was first diagnosed in 2022 at Mayo Rochester Hospital in Minnesota USA and that he was put on medication and responded well to treatment; that he was put on medication which he is supposed to depend on for the rest of his life; that he has been undergoing treatment in Pakwach Hospital in Uganda, Kakamega County General Teaching Hospital and Mater Misericordiae Hospital Nairobi and that the report from Mater indicates that the offender has been going to Mater hospital for various ailments including anxiety disorder with parasomnia for which he was being treated since October 2022 such as liver disease, malaria, fracture of right ulna and hypertension and that he has responded to sertraline used to control the anxiety and parasomnia; that on 17/4/2022 during Easter Sunday, the offender had conducted three masses in different churches before proceeding to a celebration which was in regard to completion of constructing of a building at his brother Polycap Ouma's home (father of the victim); that it was around 3.00 pm and that he was very tired and hungry; that as he was waiting for the goat to be slaughtered and prepared, he went to rest , fell asleep and had a scaring dream where he was shouting in the dream; that people went and shook him and when he came into his senses, he saw the baby lying on his stomach and blood on the ground; that he was confused as many people were there making noise that Father has killed; that he was then taken away to Kakamega Hospital and later on to Mater Hospital in Nairobi for treatment; that wen he recovered after a year he got a lawyer who accompanied him to go and report at Ukwala



Police Station; that at the station he recorded a statement and was later charged at Siaya High Court; that he was later released on bond pending hearing and determination of the matter; that the offender is very remorseful and prays that the court considers him for non-custodial sentence to enable him continue with his teaching job at Apostle of Jesus Mission Seminary where students depend on him; that he is among the four priests who run the parish which has twelve stations and that his absence will make the three station miss masses every Sunday as he usually conducts three (3) masses each Sunday; that he went and apologized to the victim's family members and that he reconciled with the victim's parents who forgave him; that he feels useful to community when he is teaching and that the father of the victim is his cousin and that the offender's family and that of the victim reconciled and that his family members supported the victim's family financially during the funeral and that currently they are interacting well and living peacefully; that the offender's mother states that the offender has been a disciplined person since childhood and that she has never witnessed any act of violence in him except in this matter and that he was brought up on Christian values; that the community view the offender as a good person and that he has never been in conflict with the law except in this matter; that he has never been suspended as a Father and has been handling his role as a priest and a teacher very effectively. The probation officer recommends a non-custodial sentence in the matter.

6. I have given due consideration to the mitigation submissions of learned counsels and the pre-sentence report. Under Section 204 of the Penal Code, the maximum sentence for murder is death but owing to the Supreme Court's decision in Francis Karioko Muruatetu & 2 Others Vs, Republic [2017] eKLR, held that the mandatory sentence of death was unconstitutional as it denied the courts the opportunity to receive mitigation from offenders before imposing the appropriate sentences. It was therefore held that the courts were now free to receive mitigation from offenders before imposing the appropriate sentence but the courts could as well impose such sentence if the circumstances warrant it. Already, this court vide its judgement dated 28/10/2025 has found the accused guilty and convicted him for the offence of manslaughter which attracts a maximum sentence of life imprisonment upon conviction. Indeed, the maximum sentence is usually imposed upon the worst form of offenders.
7. It is noted that the circumstances leading to the death of the deceased are tragic in that he died a very violent death. The deceased who was then aged under two years was asleep when the accused herein seized him and pounded him on the wall until he fell down unconscious and that efforts to rescue his life were not successful. The deceased thus died a very painful death. The deceased was the only son to his parents and that his death has caused a lot of mental anguish to them. The pathologist who conducted the autopsy formed the opinion that the cause of death was multiple injuries secondary to blunt force trauma. The deceased who was then a young and innocent child and who was peacefully sleeping did not deserve to die in the manner he did thanks to the accused's parasomnia.
8. According to the Judiciary Sentencing Policy Guidelines (2023), sentencing of offenders should take into account the following objectives:
 - a) Retribution - To punish the offender for their criminal conduct in a just manner.
 - b) Deterrence - To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.
 - c) Rehabilitation - To enable the offender to reform from his/her criminal disposition and become a law-abiding person.
 - d) Restorative justice - To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs.



- e) Community protection - To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.
 - f) Denunciation - To clearly communicate the community's condemnation of the criminal conduct.
 - g) Reconciliation - To mend the relationship between the offender, the victim and the community.
 - h) Reintegration - To facilitate the re-entry of the offender into the society.
9. I have considered the comprehensive pre-sentence report presented by the County Probation officer which recommends a non-custodial sentence. 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 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] KLR”

The pre-sentence report filed by the County Probation officer is quite comprehensive. It is noted that the accused has reached out to the family of the deceased who are his relatives for pardon and that he had gone ahead to reach some reconciliation with them whereby he paid them a sum of Kshs 300,000/ as well as footing the funeral expenses. It is also noted that the family earlier in the proceedings through counsel watching brief sought to withdraw the matter but which application was dismissed in light of the clear provisions of article 157 of *the constitution* which gives the Director of Public Prosecution the sole mandate to conduct prosecution throughout the country and that any such withdrawal of criminal cases was his responsibility. It was therefore quite unusual for the family of the deceased to seek to withdraw the matter yet it was not a private suit but a matter in which the public had interest. It seems the family has not yet given up on its quest from seeking to have the accused freed from these proceedings. It is unfortunate that the accused being a relative is the one now held responsible for the death of a child of his cousin. It is believed that the accused will live with this guilt for the rest of his life in as much as he claims to love children. It is noted that the accused is remorseful over the incident and regrets the same. Being guided by the Judiciary's Sentencing Policy Guidelines aforesaid, as well as the fact that some reconciliation has been undertaken between the accused and family of the deceased, i find that a non-custodial sentence is merited in the circumstances. This will enable the accused to undergo the requisite rehabilitation under the strict supervision of the probation officers.

10. In the result, i order the accused herein Felix Charles Owino to serve a sentence of three (3) years under probation. That in the event of non-compliance with the probation terms, the order on probation shall be cancelled and that he shall be ordered to serve custodial sentence for the whole period regardless of any period already served under probation.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 11TH DAY OF NOVEMBER 2025.

D. KEMEI

JUDGE

In the presence of:

Felix Charles Owino.....Accused



Nyaberi.....for accused

Okinyo Ronald.....Watching brief

M/s Kerubo.....for Prosecution

Kimaiyo/Maureen.....Court Assistant

