

**RULING ON SENTENCE**  
**HCCR E002 OF 2025**



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYAMIRA**  
**CHERERE-J**  
**HCCR E002 OF 2025**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTIONS.....**  
**.....REPUBLIC**

**AND**

**SAMUEL OMWENGA ONCHOMBA .....**  
**.....ACCUSED**

**RULING ON SENTENCE**

1. The accused person, Samuel Omwenga Onchomba, was initially charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code following the death of his younger brother, Bernard Nyaunga Onchomba. The prosecution case, as disclosed in the information and the facts placed before the Court, was that on the night of 22nd August 2024 at around 2100 hours at Giangende village in Masaba North Sub-County within Nyamira County, the deceased met his death in the course of an altercation involving the accused.
  
2. The factual background, which was not contested, is that the deceased had gone to intervene and separate the accused from assaulting his wife. In the course of that intervention, a

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confrontation ensued which resulted in the deceased sustaining fatal injuries. There was no evidence placed before the Court suggesting premeditation or malice aforethought within the meaning of section 206 of the Penal Code.

3. Upon negotiations between the Director of Public Prosecutions and the accused, and in accordance with the law on plea bargaining, the charge of murder was reduced to manslaughter contrary to section 202 as read with section 205 of the Penal Code. The accused accepted the plea bargain agreement and pleaded guilty to the lesser charge of manslaughter. The Court satisfied itself that the plea was unequivocal, that the accused understood the nature and consequences of the plea bargain, and that the agreement met the constitutional and statutory threshold.
  
4. The law governing plea bargaining in Kenya is anchored in Article 50(2)(c) and (o) of the Constitution, section 137A to 137O of the Criminal Procedure Code, and the Plea Bargaining Rules, 2018. Plea bargaining is recognised as a legitimate tool in the administration of criminal justice, aimed at expeditious disposal of cases, reduction of backlog, and attainment of substantive justice, provided it is entered into voluntarily, knowingly and without coercion.

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5. The Court of Appeal has affirmed the legality and utility of plea bargaining, emphasising that it does not undermine the rights of an accused person so long as the safeguards in the law are complied with. The appellate court has further held that once a plea bargain is properly entered and adopted by the court, sentencing remains a judicial function to be exercised independently, guided by the law, the facts, and the circumstances of each case.
  
6. Upon conviction, the Court called for and received a pre-sentence inquiry report from the Probation and Aftercare Service. The report sets out the accused's personal circumstances, family background, and community views. The accused is a 33-year-old male, a casual labourer, with no known previous criminal record. The deceased was his younger brother. The report notes that the incident deeply affected the family, and that while the family of the offender pleads for leniency, the family of the deceased expressed the view that a custodial sentence should be imposed due to the gravity of the offence.
  
7. The probation report further indicates that the accused is remorseful, has acknowledged responsibility for his actions, and that the offence occurred in the context of a domestic altercation rather than a pre-planned criminal enterprise.

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However, the report concludes that the accused is not suitable for a non-custodial sentence and recommends a lenient custodial term.

8. In determining an appropriate sentence, this Court is guided by section 205 of the Penal Code which provides that a person convicted of manslaughter is liable to imprisonment for life. That provision sets the maximum penalty, leaving the trial court with wide discretion to impose a sentence that is proportionate to the culpability of the offender and the circumstances of the offence.
9. Sentencing is a discretionary judicial function guided by established principles, including proportionality, deterrence, rehabilitation, retribution, and restorative justice. The Court of Appeal in **Thomas Mwambu Wenyi v Republic [2017] eKLR** emphasised the centrality of proportionality in sentencing and cited with approval the decision of the Supreme Court of India in *Alister Anthony Pereira v State of Maharashtra*, where the court underscored that sentencing must be appropriate, adequate, just and proportionate to the nature and gravity of the offence and the manner in which it was committed. The appellate court affirmed that there is no straight-jacket formula in sentencing, and that courts must balance the twin objectives of deterrence and correction,

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while taking into account the gravity of the crime, the motive, the manner of commission, attendant circumstances, and the social interests and conscience of the society. This Court is guided by those principles in determining an appropriate sentence in the present case. The Court of Appeal has consistently held that an appellate court will only interfere with sentence where it is shown that the trial court acted on wrong principles, overlooked material factors, or imposed a sentence that is manifestly excessive or lenient.

10. In this case, the mitigating factors in favour of the accused include: the absence of malice aforethought; the fact that the deceased was killed in the course of a sudden confrontation; the familial relationship between the accused and the deceased; the accused's plea of guilty following a plea bargain, which saved judicial time; his expression of remorse; and the fact that he is a first offender.
  
11. On the other hand, the Court must take into account the aggravating factors, namely: the loss of life; the use of unlawful violence; and the fact that the deceased was attempting to stop the accused from assaulting his wife, thereby placing himself in harm's way in the course of protecting another.

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12. The Court has also considered the period spent in custody. The accused was arrested on 15th January 2025 and has remained in custody since then. In accordance with section 333(2) of the Criminal Procedure Code, the Court is obligated to take into account the period already spent in custody when imposing sentence.

13. Having considered all the foregoing, including the plea bargain agreement, the probation report, the mitigation offered, the submissions on sentence, and the applicable legal principles, the Court is satisfied that a custodial sentence is warranted, but that the same should be lenient and proportionate to the circumstances of the offence.

14. Consequently, the accused, Samuel Omwenga Onchomba, is hereby sentenced to imprisonment for a term of two (2) years for the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The sentence shall run from **15<sup>th</sup> January 2025**, being the date of his arrest and commencement of custody.

DELIVERED AT NYAMIRA THIS                      21<sup>st</sup>                      DAY OF  
January      2026



**WAMAE.T. W. CHERERE**  
**JUDGE**

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**Appearances**

**Court Assistant - Hilda**

**Accused - Present**

**For Accused - Ms. Shilwatso**

**For the DPP - Mr. Chirchir (SADPP)**