



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Odweyo (Criminal Case E026 of 2023)
[2026] KEHC 403 (KLR) (23 January 2026) (Sentence)**

Neutral citation: [2026] KEHC 403 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E026 OF 2023
DK KEMEL, J
JANUARY 23, 2026**

BETWEEN

REPUBLIC PROSECUTION

AND

SAMUEL ODWEYO ACCUSED

SENTENCE

1. The accused herein Samuel Odweyo 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 25th day of July 2023 at around 1930 hours at Ulanda village of Kaugagi Sub Location, South West Alego Location in Siaya Sub County within Siaya County unlawfully killed Fredrick Onyango Wanyande.
2. Vide the judgment of this court dated 23rd November 2025, the accused was found guilty of the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and convicted accordingly.
3. The sentencing hearing proceeded on 14/1/2026. M/s Akinyi for the defence submitted inter alia; the accused accepts the verdict of this court and that he is remorseful; that he regrets the incidence; that the accused is a first offender as he has no past records; that he had been a law abiding citizen in the area; that he has social responsibility for his family who depend on him and now seeks for a non-custodial sentence; that he has had time to reflect on the offence while in custody; that he had been assaulted by the villagers during his arrest and has therefore been sickly all along.
4. Mr. Soita for the prosecution submitted inter alia; that the pre-bail report and presentence reports are not favourable; that a custodial sentence as proposed be given; that there is need to balance the scales of justice and that the accused should spend considerable time in custody.
5. This court called for a pre-sentence report by the Probation department. The same is dated 11/12/2025 and indicates inter alia; that the accused is a family man with four children and that his health condition



is stable save for the injuries inflicted by the villagers during his arrest; that the accused has no history of drug and substance abuse; that the accused farm crops used to be frequently stolen from his farm and that he had not managed to catch any of the thieves; that the accused laid a trap and that soon afterwards the deceased emerged and that he attacked him with a club on the left side of the ribs killing him instantly; that the accused does not exhibit any remorse and still portrays the death of the deceased as an incident which happened while he was defending himself from mob justice; that during the interview with the probation officer he feigned innocence over the death of the victim and was not committal over reconciliation or even compensation as he appeared not to care; that the family of the accused relocated to Kisumu after their house and property were destroyed and burnt down by the irate mob; that the deceased was aged 28 years and the first born in a family of six; that the deceased was not married at the time of the incident but had one son out of wedlock currently aged four years; that deceased's mother states that the accused should be accorded custodial rehabilitation to enable him learn to value human life in future; that the deceased was her family's helper as he supplemented the family income and that she is currently overwhelmed in supporting the victim's siblings as she is a casual labourer; that the death of deceased left her traumatized and that she had to relocate from the locality to avoid more trauma for herself and her children; that the community and local administration recommends a non-custodial sentence but they are not sure about his safety and that they are convinced that the accused remains in custody so as to appease the community for the sake of justice; that the probation officer recommends for a custodial sentence.

6. I have given due consideration to the mitigation submissions of learned counsels and the pre-sentence report. Under Section 205 of the Penal Code, the maximum sentence for manslaughter is life imprisonment. However, the maximum sentence is usually reserved for the worst form of offenders. Looking at the circumstances of the case, I am of the view that the accused does not merit a sentence of life imprisonment. It is also noted that homicide is unlawful unless authorized by law. The circumstances leading to the death of the deceased are tragic. The deceased was struck with a single blow of a huge club by the accused which smashed his ribs and died instantly. The deceased therefore did not have a chance to survive from such a blow. The pathologist, Dr. Eric Okong'o (PW5) noted that the stomach was full of blood measuring about 700ml that there were tears on the vessels. He formed the opinion that the cause of death was excessive hemorrhage secondary to spleen injury. The accused person ought to have used other avenues of redress over the alleged theft of his farm produce and that had he done so, the deceased would be alive today. The deceased did not deserve to die in the manner that he did. Even if the accused still maintains that he was acting in self defence, the evidence as well as the information gathered during the pre-sentence investigations leaves no doubt that indeed the accused ambushed the deceased unawares and bludgeoned him to death. The deceased therefore died a very painful death.
7. 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”
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.
8. Looking at the circumstances of the offence as well as the pre-sentence reports and the mitigation of the accused herein, the circumstances leading to the death of the deceased are tragic. The deceased was struck with a single blow of a huge club by the accused which smashed his ribs and died instantly. The deceased therefore did not have a chance to survive from such a blow. The pathologist, Dr. Eric Okong'o (PW5) noted that the stomach was full of blood measuring about 700ml that there were tears on the vessels. He formed the opinion that the cause of death was excessive hemorrhage secondary to spleen injury. The accused person ought to have used other avenues of redress over the alleged theft of his farm produce and that had he done so, the deceased would be alive today. The deceased did not deserve to die in the manner that he did. Even if the accused still maintains that he was acting in self defence, the evidence as well as the information gathered during the pre-sentence investigations leaves no doubt that indeed the accused ambushed the deceased unawares and bludgeoned him to death. A precious life was lost thanks to the accused's ungovernable anger. The deceased therefore died a very painful death.
9. It is noted that the accused has been in custody since 25th July 2023. The presentence report is not favourable for a non-custodial sentence. That the villagers had retaliated and demolished his house and damaged his properties forcing the accused family to relocate to Kisumu and that as at the moment, the villagers are still irate and therefore the local administration have indicated that they cannot guarantee the safety of the accused if he is released back to the village. The pre-sentence report has also confirmed that the accused is still not remorseful for what he had done and therefore the recommendation for custodial sentence is appropriate in the circumstances. I find that custodial rehabilitation is warranted so as to enable the accused undergo comprehensive rehabilitation and for his anger related issues to be addressed before being released back to the society.
10. In the result, i order the accused herein Samuel Odweyo to serve a sentence of twenty-five (25) years imprisonment which shall commence from the date of arrest namely 25th July 2023.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 23RD DAY OF JANUARY 2026.

D. KEMEI



JUDGE

In the presence of:

Samuel Odweyo.....Accused.

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

Soita.....for Prosecution.

Maureen/Kimaiyo.....Court Assistant.

