

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT SIAYA**  
**CRIMINAL CASE NO. E025 OF 2023**

**STATE .....**  
**PROSECUTION**

**VERSUS**

**DANIEL ODHIAMBO.....**  
**ACCUSED**

**RULING**

1. The accused herein **Daniel Odhiambo** 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 26<sup>th</sup> day of July 2023 at around 1100hrs in Pap Yamo village of Komenya Kowala Sub-Location, West Alego Location in Siaya Sub-County within Siaya County, jointly with another not before court unlawfully killed one Aloice Ochieng Nyapola. However, following a plea bargain agreement dated 18<sup>th</sup> November 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 10<sup>th</sup> February 2026. Mr. Oduol, learned counsel for the defence, submitted inter alia; that the accused is a first offender; that he is remorseful for the acts and omissions which led to the death of deceased; that he pleads for leniency; that he takes full responsibility and maintains that he did not intend to kill the deceased; that he is a young man aged twenty three(23) years with a young family who rely on him; that he urges the court to go by the recommendations of the probation officer for a non-custodial sentence under Section 205 of the Penal Code; that the court has a wide discretion in sentencing and that he urged the court to exercise the same and impose the least severe sentence in law.
3. Mr. Muntui, learned counsel for the prosecution, submitted that he has perused the pre-sentence report; that the same is not binding upon the court which has discretion in sentencing; that they have presented credible evidence against the accused; that the charges are serious and that the circumstances be taken into account by the court.
4. The court called for a pre-sentence report which was duly filed by the County Probation Officer. The same is dated 9<sup>th</sup>

February 2026. The report indicates inter alia; that the offender's family has strong Christian foundation and that there are no reported incidences of criminality or drug and substance abuse; that the offender upon competing class eight in 2017 was not able to pursue his secondary education due to lack of finances; that he was engaged as a caretaker in a nearby home where he has been working for the past five years before his arrest; that on the fateful day, the offender's employer sent him in the company of his friend to her mother's house to fix her solar panel that had been damaged and also find out the reason as to why the deceased had been cutting and stealing the 89 year-old lady's trees, bananas and other property; that after fixing the solar, they proceeded to the deceased's home to make an inquiry; that a verbal exchange ensued between the three and the deceased who was milking his cow at the time and who rushed back to his house to arm himself but the two overwhelmed him by beating him continuously with a wooden stick; that during the physical confrontation, the deceased sustained serious injuries and that upon being rushed to hospital, he succumbed to the injuries; that the offender acknowledges that his action contributed to the death of the victim although he indicates that he had no intention to cause the death; that he accepts responsibility for the unlawful act that resulted in the fatal outcome; that he admits poor emotional regulation and decision making at the time coupled with raw energy contributed to his action that resulted in death; that he regrets the loss of life and

acknowledges that the offence has caused significant harm to his personality and the victim's family; that he has insights into the seriousness of the offence; that he was able to reflect on the circumstances surrounding the incident and identify contributory factors including emotional responses and situational pressures at the time; that he realizes that if he could employ alternative choices the victim could be alive today; that his attitude suggests a willingness to engage in reconciliation as he addresses factors linked to his offending behavior; that the offenders family regrets the loss of life and seeks forgiveness from the victims family on behalf of the offender; that they confirm that it was his first known offence as he is always humble with polite personality and that the crime has painted the family name negatively within the community; that the family prays for a non-custodial sentence that would help create an enabling environment for reconciliation with the victim's family including exploring avenues for restitution.

The report also captures the victim's family's views which are inter alia; that the victim was aged 38 years old with a family; that he was the only breadwinner for his family; that the victim's wife has been forced to look for employment as a house help in order to fend for herself and their child; that the victim's mother is still bitter and feels betrayed that a long time family friend and a cousin sister to her husband, could send people to kill her son; that she insists that the lady who was the offender's employer before arrest produces the other perpetrator before she can have a

reconciliation meeting which she is open to; that the deceased's siblings insists that the paternal aunt comes out clearly on why she sent the offender and his accomplice to murder their brother before they can have a reconciliation sitting and that she produces the other perpetrator; that the family is in unison that the offender be committed to a custodial sentence; that the community and area administrator expressed a general consensus that the incident was unintentional and does not reflect typical behavior of the offender; that there is a sense of empathy among the people attributed to the human error aspect of the offence; that the community members opine that the offender has the potential to become a productive law abiding citizen if given an opportunity to serve a non-custodial sentence; that they have positively remarked on the possibility of healing and restoration rather than punitive measures; that the local administrative express support for the offender's reintegration, believing in a second chance and feel that the offence was an isolated one and not part of a broader pattern of criminality; that the community interviews indicate that the offence is in the context of unfortunate accidental event and that the offender had positive contributions prior to the offence; that there is strong support for rehabilitation and reintegration with local leaders willing to assist in mentorship and oversight while he is serving a non-custodial sentence; that although this offence having taken place far away from the offender's area of fixed abode, the community still perceives him as

remorseful, low risk for future harm and deserving supportive measures; that the probation officer indicates that the offence was committed without malice aforethought as provided under the Penal Code; that the offender has demonstrated remorse and poses a low risk of re-offending; that in line with objective of proportionality, rehabilitation and public safety, a rehabilitative sentence under probation supervision for a period of three years may be appropriate subject to court's discretion.

5. I have considered the oral submissions of learned counsels as well as the pre-sentence report. Under Section 205 of the Penal Code, the punishment for manslaughter is life imprisonment. This is the maximum sentence and which is imposed for the worst of offenders. In the case of **Francis Karioko Muruatetu & 2 Others (2017) eKLR**, the Supreme Court held that the mandatory nature of death sentence in murder cases was unlawful and that courts should receive mitigating circumstances from offenders before imposing an appropriate sentence thereafter. The court went further to add that the court could still impose a sentence of death if the circumstances warrant it. Hence, applying the said foregoing guidelines mutatis mutandis the present case, I find that this court upon consideration of the circumstances as a whole and taking into account the fact that the accused has pleaded guilty to a lesser offence of manslaughter can impose the maximum sentence of life imprisonment if the circumstances warrant it.

6. The circumstances leading to the death of the deceased are rather tragic as it transpired that **on 26/7/2023 at around 0600 hours the accused received a call from a lady called Sharon Akoth informing him that the deceased Aloice Ochieng Nyapola had gone to the home of Christine Atieno to cut down trees. That the accused alerted his employer who in turn instructed him to pick his friend Bylon Ouma and take a boda boda and rush to the home of his employer's mother to establish the claims. That the accused and his friend went as directed and met Sharon Akoth who briefed them that the deceased had already left. That they were served tea and then assisted in fixing a solar panel. That they later proceeded to the home of the deceased who was then milking his cows. That the accused and his friend assaulted him using clubs. That the deceased ran to his house but the accused pursued him and continued assaulting him all over the body. That the wife of the deceased one Millicent was also assaulted when she attempted to intervene. That the mother of the deceased also attempted to intervene but was pounced upon by the accused and assaulted. The accused and his companion went back to the home of Christine and informed her of what had taken place and then proceeded to his employer's home. That the mother of the deceased looked for a vehicle and rushed the deceased to Siaya County Referral Hospital and who died while undergoing**

**treatment. It is clear that the deceased was lawfully at his compound tending to his animals and was not at the alleged place where trees had been cut and therefore the accused and his companion ought not to have attacked the deceased even before inquiring from him about the circumstances regarding cutting of trees. The accused and his companion just descended on the deceased and did not give him even a chance to explain himself.**

7. The autopsy was conducted on the body of the deceased by Dr. Eric Okong'o (PW3) who noted several injuries inter alia; that the deceased externally had a cut wound on frontal region above left eye, 20cm length; that there were signs of bleeding from nose and mouth; that there were bilateral tibia fibula fractures as well as fracture on right lower limb was open. No other signs of trauma. Internally all tract was intact; that the right lung was collapsed while the left lung was well aerated. That cardiovascular system was normal. On digestive system, no signs of trauma and that there was a grade one spleen laceration with minimal bleeding. That on head, there was a repaired scalp wound. That there was no sublime haematoma. That the nervous system was normal and that there was no epidural or sub-dural haemorrhage. That the spinal column and spinal code were not explored. That he formed the opinion that the cause of death was tension pneumothorax with polytrauma and he produced the post mortem report as Exhibit 1.

8. It is noted that from the injuries as established by the pathologist, the deceased sustained very severe injuries. The accused and his companion had been directed to go and check on the alleged cutting of trees at the compound of the accused's employer and then report back but instead went ahead to look for the deceased whom he found at his home milking his cow and then viciously attacked him and left him for dead. The deceased could not survive from the injuries as he died on arrival at the Siaya County Referral Hospital. The deceased did not deserve to die the manner in which he did. The accused literally took the law into his hands and killed the deceased. Had the accused used other lawful channels such as first reporting to his employer or the clan elder or the chief, the deceased could be alive today. The deceased therefore died thank to the overzealousness of the accused herein. Even though the pre-sentence report indicated that the accused lived a quiet life, his action in viciously attacking the deceased with such fury left no doubt that the accused had some ungovernable anger related issues which sprung up to the fore during this incident. The accused's quiet mien was just an underlying volcano that could erupt anytime anyone crossed his path. The actions of the accused has led to the death of the deceased who was still a young man in his prime.

9. A perusal of the pre-sentence report reveals that the family of the deceased are still bitter and who seek for a custodial sentence while the community is of the view that the

accused deserves a chance on a non-custodial sentence. Whereas the probation officer in his report has vouched for a non-custodial sentence, the circumstances obtaining militates against such a sentence.

10. Regarding the sentence to be imposed, it is noted that the maximum sentence for manslaughter is life imprisonment. It is trite that the sentence to be imposed must reflect the moral blameworthiness of an offender and that the court must take into consideration all the facts and circumstances of the case. Indeed, the accused upon visiting the home of the deceased, had the option of first inquiring from him as to whether he was involved in the tree cutting of trees belonging to his (accused)'s employer and thereafter report back to his employer or the clan elder or chief. The accused had no right to take the law into his hands and killing the deceased. The injuries inflicted on the deceased left no doubt that the intention was to eliminate him and hence the reason the deceased did not even manage to reach the hospital for assistance. Had the accused used other lawful channels, the deceased would be alive today. The deceased thus died thanks to the accused's ungovernable anger.

11. 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”**

11. 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.

Upon consideration of the foregoing, I find that the accused deserves to undergo custodial rehabilitation before being reintegrated back to the society. The social inquiry report indicated that the accused has a quiet mien which could be deceiving in that he erupted like a violent volcano and viciously attacked the deceased without a second thought which implied that he has some ungovernable anger. The deceased lost his life thanks to the accused's overzealousness and unbridled anger. I find that he requires comprehensive rehabilitation before being released back to the society. I am of the considered view that a sentence of fifteen (15) years' imprisonment would be appropriate in the circumstances. As the accused has been on bond pending trial, then the sentence shall proceed from the date of conviction namely 26/1/2026.

12. In the result, I order the accused herein **Daniel Odhiambo** to serve a sentence of fifteen (15) years' imprisonment which shall commence from the date of conviction namely 26/1/2026.

**Dated and delivered at Siaya this 20<sup>th</sup> day of February 2026**

**D.KEMEI**

**JUDGE**

**In the presence of :**

**Daniel Odhiambo.....Accused**

**Odhiambo.....for Accused**

**Muntui.....for Prosecution**

**Maureen.....Court Assistant**