



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL CASE NO. E003 OF 2024

REPUBLIC

PROSECUTOR

VERSUS

BONFACE OKORE ANDALA

ACCUSED

RULING ON SENTENCE

1. The Accused was convicted of the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code after entering into a plea agreement with the Prosecution.
2. The factual basis of the offence was that on 25th December 2023, an incident of murder was reported at Emukaba Police Post vide OB NO. 02/25/2023 at 0715 hours. The deceased, Duncan Baraza Andala, had been assaulted by his two brothers, namely Bonface Okore Andala, the Accused herein, and Jacob Adanje Andale, who was at large at the time of the hearing. The assault, which occurred on 24th December 2023 at around 2100 hours, arose from a disagreement

- over ownership of a house that the deceased had occupied, and allegations that the deceased had stolen iron sheets from their father's house. The deceased was perceived to be a troublemaker in the family, and the conflict was aggravated when the deceased went and stood on their late mother's grave and started singing dirges, which disturbed the family. His actions irritated the brothers, who assaulted him, thereby inflicting fatal injuries upon him.
3. A post-mortem was done on 28th December 2023, whereby Dr. Mchana observed disseminated superficial incised wounds on both shoulders, forearms and both limbs. He noted a compound fracture on the chin with mild lacerations. There were extensive contusions on both forearms, wrists and lower limbs. The Pathologist concluded that the cause of death was circulatory collapse secondary to mixed force trauma following assault.
 4. In mitigation, the Accused expressed regret for his actions. He said that he is a 24-year old man, married with one child, and a first offender. Through Mr. Shifwoka, his Advocate, he submitted that he has no previous history of criminal or deviant behavior, and believed at the time of the offence that he was reacting in reasonable self-defence and fair chastisement, but had no intention to kill the deceased, but grabbed a rungu that the deceased was using and hit him with it. He sought forgiveness and said that he had already commenced reconciliation with the family. The Accused said that he had undergone training while in custody, had attained a

- certificate in Christian Life Teaching, and was ready for reintegration into society. He prayed that the court grant him a non-custodial sentence.
5. On behalf of the prosecution, Ms. Chala submitted that the Accused is a first offender and had saved the court's time by entering into a plea bargain. However, she submitted that the facts could not change during mitigation. She urged the court to impose a custodial sentence to achieve proportionality and denunciation, and to promote rehabilitation.
 6. A pre-sentence report confirmed the Accused person's plea for leniency and the fact that he is a young father of one.
 7. Regarding the victim's attitude towards the offender, it was indicated that the offender's father and siblings demonstrated a reconciliatory and non-adversarial stance, noting that the Accused enjoyed a cordial relationship with the brother before the incident. The family expressed hope for a non-custodial sentence with the hope that his presence would help the family maintain stability and resume normalcy in their daily lives.
 8. According to the report, the Community conveyed a generally supportive and non-hostile attitude towards the offender, who had no criminal record and is known for his commitment to honest work and responsible conduct. Through the area assistant chief, the community deferred to the victim's family's wishes and did not object to a non-custodial sentence.

9. Ultimately, the pre-sentence report recommends a probation order of three years, subject to the court's discretion.
10. The objectives of punishment as set out in the Judiciary Sentencing Guidelines 2023 are: retribution, deterrence, rehabilitation, restorative justice, community protection, denunciation, reconciliation and reintegration.
11. In considering an appropriate sentence the court needs to weigh the aggravating and mitigating circumstances in line with the principles of sentencing set down in the case of **Francis Karioko Muruatetu & Another v. Republic; Katiba Institute & 5 others (Amicus Curiae) [2017] KESC 2 (KLR)**, where the Supreme court held that the factors to be considered during re-sentencing and which factors are relevant to a fresh sentence are as follows:
 - (a) *age of the offender;*
 - (b) *being a first offender;*
 - (c) *whether the offender pleaded guilty;*
 - (d) *character and record of the offender;*
 - (e) *commission of the offence in response to gender-based violence;*
 - (f) *remorsefulness of the offender;*
 - (g) *the possibility of reform and social re-adaptation of the offender;*
 - (h) *any other factor that the court considered relevant.*
12. It is noted that the Accused has been in custody since 11th January 2024, when he was first placed in custody pending trial. During his time in custody, he has undergone rehabilitation and attained a

certificate. Being a first offender with no history of deviant behaviour, the 26 months in custody and the guilt of having killed his brother are, in my view, sufficient punishment for purposes of denunciation and retribution. Regarding rehabilitation, I agree with the Probation Officer that the Accused requires support for his rehabilitation and community integration. The Accused must be made to understand that he should never resort to violence to resolve any dispute.

13. In the end, I commit the Accused to probation for a period of three (3) years. During this period, he shall remain under continuous supervision in line with the Probation of Offenders Act.

Dated, signed, and delivered at Kakamega this 13th day of April 2026.

**A. C. BETT
JUDGE**

In the presence of:

Ms. Chala for the Prosecution/State

Ms. Anguba for Accused

Court Assistant: Polycap