



**State v Misaro & 2 others (Criminal Case E008 of 2024)  
[2025] KEHC 1463 (KLR) (31 January 2025) (Sentence)**

Neutral citation: [2025] KEHC 1463 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISII  
CRIMINAL CASE E008 OF 2024  
TA ODERA, J  
JANUARY 31, 2025**

**BETWEEN**

**STATE ..... PROSECUTION**

**AND**

**BENSON NYANGACHA MISARO ..... 1<sup>ST</sup> ACCUSED**

**INNOCENT OBADIAH RATEMO ..... 2<sup>ND</sup> ACCUSED**

**LUCY KEMUNTO KURURA ..... 3<sup>RD</sup> ACCUSED**

**SENTENCE**

1. The offender herein was initially charged with murder contrary to Section 203 as read with 204 of the penal code. He later entered into a plea bargain agreement with prosecution and the charges were reduced to manslaughter contrary to Section 202 as read with 205 of the penal code. He pleaded guilty to manslaughter and he was accordingly convicted.
2. This case is now coming up for sentencing. The court called for a presentence report from the probation and after Care department and it has emerged from the same that the convict and the deceased were brothers. Further that on the material day deceased went to the home of accused and found him making bricks with one Charles. He accused him of exposing photographs of their mother on face book and thereby causing her to be bewitched. He picked a panga which Charles had left on the ground when the argument ensued. Deceased and charged towards accused who started running and deceased gave him a chase. Deceased fell down and the panga fell ahead of him and accused picked the panga and cut him with it once on the head causing him the fatal injuries.
4. The pre-sentence report indicates that the information from the local administration and the community indicates that deceased provoked accused and are willing to have him back in the community. Accused has also reconciled with his family. It recommended a non- custodial sentence. Defence Counsel submitted that the offer is remorseful, a father of 3 children and that the wife works



in Middle East and he is the sole bread winner of the family and has been in custody for one year and learnt his lesson. They sought a non-custodial sentence. The state submitted that the offender has no previous criminal records.

6. The Supreme Court in the Muruatetu case set down the following factors to be considered in sentencing in murder trials;
  - 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 considers relevant.
7. I have considered the age of the offender nature of the offence, its circumstances, the pre-sentence report, mitigation, submissions, the remand period since 2023, the fact that the deceased provoked the offender that he saved judicial time by pleading guilty upon entering into a plea bargain agreement which has expedited the determination of the case, the fact that he is remorseful and the sentiments of the family of deceased to deceased. I agree with defence counsel that the offender deserves leniency for entering into a plea bargain agreement. I find that a non - custodial sentence is appropriate in the circumstances for the offender to be counseled and guided on anger management.
8. I proceed to sentence the offender to serve 3 years probation.  
14 days Right of appeal.

**T.A ODERA**

**JUDGE**

31.1.25

Delivered Virtually Via Teams Platform in the Presence of:

The Offender

Koima for the State

Court Assistant: Oigo

Mr. Bonuke for the Offender

