



REPUBLIC OF KENYA



KENYA LAW
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**State v Ogori (Criminal Case E062 of 2023)
[2025] KEHC 1153 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1153 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
CRIMINAL CASE E062 OF 2023**

TA ODERA, J

FEBRUARY 27, 2025

BETWEEN

STATE PROSECUTION

AND

FRANCIS MOMANYI OGORI ACCUSED

RULING

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 pre-sentence report from the probation and after Care department and it has emerged from the same that the offender is the cousin to the deceased.
3. It has emerged that there was bad blood between accused and deceased as deceased used to mock accused alleging that he was not raising his biological children.
4. The report indicates the offender is a youthful man aged 22 with a young family and that the community members and the family of deceased are still bitter with the offender and have vowed to end his life if he goes back home. The report recommends him a custodial sentence for his own safety and rehabilitation for his behavioral problems
4. Defence Counsel submitted that the offender is a young man with a family and is remorseful is a married and has one child, he is remorseful, and was a first offender. Prosecution also supported the contention that it was submitted that the offender entered into a plea bargain agreement due to his remorse and so he prays for a non- custodial sentence.



5. 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.
5. I have considered the age of the offender nature of the offence, its circumstances, the pre-sentence report, mitigation, submissions, the remand period of about 1 year and 5 months, the fact that he is remorseful and the sentiments of the family of deceased to deceased. This was indeed a case of provocation and self defence as rightly submitted by defence. The deceased assaulted a child of accused, then insulted him when and later on the next day he passed through the home of the offender and hurled obscenities at this and his wife calling them uncircumcised. He later returned to the home of the offender at night in company of other people pelted his roof with stones on his and when the offender went outside to check what was happening, he attacked him with a stick on the head and the offender managed to snatch the stick from him and hit him with it on his twice on his back and he sustained the fatal injuries.
6. From the probation report, the community and the family of deceased are still bitter with the offender, they and the local administration recommend a custodial sentence. However, it has also emerged that the offender moved to Kitale in Trans Nzoia County which is far from Kisii county and the offender was also released on bond on 31.10.24 and no security issue has arisen. I agree with defence counsel that the offender deserves leniency for entering into a plea bargain agreement and saved the precious judicial time of the court and expedited the determination of the case.
7. I find that a custodial sentence is not appropriate in circumstances of this case. I am inclined to impose a non-custodial sentence.
8. I proceed to sentence the offender to serve 3 years probation.
9. 14 days Right of appeal.

T.A ODERA

JUDGE

27.2.25

Delivered Virtually Via Teams Platform in the Presence of:

The offender

Koima for the State

Court Assistant: Oigo

Mr. Magara advocate for the Offender



Mr. Cheserek for probation

