



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**State v Ochieng (Criminal Case E005 of 2025)
[2025] KEHC 3853 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3853 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E005 OF 2025
DK KEMEL, J
MARCH 28, 2025**

BETWEEN

STATE PROSECUTION

AND

ALOISE ODUOR OCHIENG ACCUSED

RULING

1. The accused herein Aloise Oduor has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. However, following a plea bargain agreement dated 4th March, 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 and was convicted accordingly.
2. The sentencing hearing proceeded on 17th March, 2025. Mr. Odhiambo counsel for accused submitted inter alia; the accused is a first offender who has pleaded guilty at the first opportunity and has saved judicial time; that he is remorseful and regrets the incident; that he prays for leniency and he be given non-custodial sentence; that even though the presentence report is negative, the court should consider granting him non-custodial sentence.
3. Mr. Soita, Counsel for Prosecution submitted inter alia; that the court be guided by the presentence report. That the prosecution is opposed to a non-custodial sentence.
4. This court called for a pre-sentence report by the probation department. The same is dated 17th March, 2025. The same indicates inter alia; that the accused is a stubborn to his family and that at one time he chased his mother while handling a panga. That he is known to be a person of a bad reputation in the community; that the community is hostile to him and they do not want him back there since they believe that he is a major security threat and that his presence will threaten the peace. The Area Assistant Chief recommends a custodial rehabilitation as he claims that the accused has been a nuisance in the



community and that he had summoned him severally on allegations of assault towards his mother and the deceased; that the accused's marriage to the deceased was marred with frequent domestic violence. The family of the victim are bitter and does not want any association with accused or his family.

5. I have considered the mitigating submissions by both learned counsels for the parties herein. I have also considered the pre-sentence report filed by the probation department. Under Section 205 of the *Penal Code*, the maximum sentence for manslaughter is life imprisonment. However, following the decision of the Supreme Court in *Francis Karioko Muruatetu & 2 Others (2017) eKLR*, the mandatory nature of sentence was declared as unconstitutional and that the courts should receive mitigating circumstances from the offender before imposing an appropriate sentence thereafter.
6. 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 thus 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) eKLR*.”

7. The circumstances of the incident are rather tragic in that the accused had been assaulting his wife frequently and that the wife had threatened to leave the marriage. This seemed to have angered him and thus he cut her with a panga in cold blood. The autopsy report conducted by Dr. Otieno Oginga showed that the deceased died of a sudden and severe brain injury occasioned by sharp blunt force and excessive bleeding. The body of the deceased was found with multiple cut wounds. It seems the accused wanted his wife to die and that is why he really butchered her. The pre-sentence report indicated that the accused had earlier on indicated that he was going to kill the deceased and then kill himself. It also transpired from the report that the accused had been a drug addict. The Area Assistant Chief recommends a custodial rehabilitation as he claims that the accused has been a nuisance in the community and that he had summoned him severally on allegations of assault towards his mother and the deceased; that the accused's marriage to the deceased was marred with frequent domestic violence. The family of the victim are bitter and does not want any association with accused or his family. The deceased therefore died a painful death. Had the accused resorted to other channel of redress, such as using a clan elder, chief or even the courts to resolve his marital issues with the deceased, the deceased might be alive today. It is unfortunate that the deceased died and left a ten (10) month old baby girl who is now being cared by the deceased family.
8. The pre-sentence report indicates that the accused is not suitable for a non-custodial sentence as he is a violent person in the village. The custodial rehabilitation is appropriate in order to ensure that he is rehabilitated before being released to the society. It is also noted that the accused has saved the court precious judicial time by pleading to the charge. The court will take this into consideration while passing the sentence.
9. In the result, I order the said Aloise Oduor Ochieng to serve a sentence of fifteen (15) years' imprisonment.

DATED AND DELIVERED AT SIAYA THIS 28TH DAY OF MARCH, 2025.

D. KEMEI

JUDGE

In the presence of:

Aloise Oduor Ochieng.....Accused



Odhimbo.....for Accused

Soita.....for Prosecution

Mboya.....Court Assistant

