



**State v Odhiambo (Criminal Case (Murder) E040 of 2023)
[2025] KEHC 11464 (KLR) (1 August 2025) (Sentence)**

Neutral citation: [2025] KEHC 11464 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE (MURDER) E040 OF 2023**

**DK KEMEL, J
AUGUST 1, 2025**

BETWEEN

STATE PROSECUTION

AND

BRIAN OCHIENG ODHIAMBO ACCUSED

SENTENCE

1. The accused herein Brian Ochieng Odhiambo had 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 the 28th day of October 2023, at Ugadhi village, Maranda Sub Location, West Sakwa Location, Bondo Sub County within Siaya County murdered one Victor Otieno Odhiambo.

However, following a plea bargain agreement dated 10th day of February 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 28th July 2025. Mr. Okanda counsel for accused indicated to the court that he wished the accused himself to mitigate. The accused’s mitigation is inter alia; that he prays for forgiveness; that he has learnt his lesson over his mistake; that he seeks for a non-custodial sentence; that he seeks forgiveness from the victim’s family and that the victim’s family have accepted it and that he seeks this court to forgive him.

3. Counsel for Prosecution M/s Kerubo submitted that she leaves the matter to the court to decide.

4. This court called for a pre-sentence report by the probation department. The same is dated 25th July 2025. The same indicates inter alia; the accused and the deceased are brothers; that the accused on the material date was in the kitchen preparing the day’s super or dinner when the deceased herein who was the eldest brother arrived while drunk and demanded to be served food and that the accused requested him to wait a little bit as the food was not ready; that the deceased became impatient and suddenly



slapped the accused; that the accused did not react and requested another brother to bring plates to be used to serve the food; that after all of them had taken the meal, the deceased again slapped the accused accusing him having given him little ugali and having kept the rest; that the deceased went away but came back while armed with a club and hit the accused with it and that the accused managed to run away and sought refuge at his paternal grandmother's house; that the deceased pursued him there, grabbed him and pinned him on the ground and assaulted him several times; that the accused managed to free himself and managed to get a panga and cut the deceased on the neck thereby inflicting a deep cut; that the deceased walked for a short distance and fell down; the accused got scared and rushed and called for help; that the deceased died from the injuries; that his body was taken to Bondo Sub-County hospital where an autopsy was conducted by Dr. Juma Wanjovu who formed the opinion that the cause of death was cord transection at the cervical spine with severe hemorrhage following sharp neck trauma; that the offender is remorseful as he says that he did not intend to kill his brother and that he has apologized to his parents; that the deceased's parents indicate that the accused is a well behaved and responsible child and that they have forgiven him and who now request the court to consider him for a non-custodial sentence; that the community vouched for the accused's good character and that they are ready to receive him home and help him settle down; that it was the recommendation of the probation officer that the accused is suitable for a probation sentence where he will be taken through lessons to help him control his anger and become a law abiding citizen.

5. I have considered the mitigating submissions by both learned counsels for the parties herein. I have also considered the pre-sentence reports 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.”

It is noted from the autopsy report conducted on the body of the deceased by Dr. Juma Wanjovu of Bondo Sub County Hospital indicated that the cause of death was cord transection at the cervical spine with severe hemorrhage following sharp neck trauma. It is clear that the injuries sustained could not have allowed the deceased to survive. It transpired from the evidence that the deceased had earlier on confronted the accused at home over some food and that the deceased attacked the accused forcing him to flee and seek refuge at their paternal grandmother's house. The deceased pursued him there and wrestled him down and assaulted him which thus angered the accused who in retaliation snatched a panga nearby and cut him on the neck. The circumstances leading to the death of the deceased were tragic since the deceased did not deserve to die even though he was the aggressor since all homicides are unlawful unless authorized by law. It is instructive that the accused after being wrestled down by the deceased, managed to wrench free but went for a panga nearby and cut the deceased on the neck. Had the accused left the scene to another place where the deceased could not find him, the deceased could be alive today hence a precious life was lost. Further, it is noted that the accused used an offensive weapon which was not in the same strength like the deceased club(stick). The panga was more dangerous than the club and therefore the accused used excessive force against the deceased even though the deceased was the aggressor and who had subdued the accused. The social inquiry report gives a good report



about the accused's conduct in the village and that the community is ready to receive him back. The accused is remorseful and regrets the incident and has sought forgiveness from his parents who have forgiven him. The accused appears to be a young man with full life ahead of him. The probation officer has recommended a sentence under probation. It is also clear that the accused regrets having killed his own brother and that the guilt will weigh on him for the rest of his life. I find that a non-custodial sentence is suitable in the circumstances and that the accused deserves a sentence under probation and that while serving the same, he will be guided accordingly by the probation officers in order for him to become a good citizen.

7. In the result, I order the accused herein Brian Ochieng Odhiambo to serve probational sentence for a period of three (3) years. In the event of non-compliance of the probationary order, the order on probation shall be cancelled and that he shall be ordered to serve custodial sentence for the entire period of three years regardless of the period already served under probation.

DATED AND DELIVERED AT SIAYA THIS 1ST DAY OF AUGUST 2025.

D. KEMEI

JUDGE

In the presence of:

Brian Ochieng Odhiambo.....Accused

Okanda.....for Accused

M/s Kerubo.....for Prosecution

Kevin.....Court Assistant

