



REPUBLIC OF KENYA



**KENYA LAW**  
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**State v Onyango (Criminal Case E018 of 2024)  
[2025] KEHC 11525 (KLR) (1 August 2025) (Sentence)**

Neutral citation: [2025] KEHC 11525 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL CASE E018 OF 2024  
DK KEMEL, J  
AUGUST 1, 2025**

**BETWEEN**

**STATE ..... PROSECUTION**

**AND**

**VINCENT OTIENO ONYANGO ..... ACCUSED**

**SENTENCE**

1. The accused herein Vincent Otieno Onyango 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 night of 16<sup>th</sup> day of march 2024 at West Migwena Sub Location, Central Sakwa Uyoma Location, Bondo Sub County within Siaya County murdered one Leonard Ouma Agutu.

However, following a plea bargain agreement dated 17<sup>th</sup> June 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 28<sup>th</sup> July 2025. M/s Achieng counsel for accused submitted inter alia; that the accused prays for leniency; that the accused is remorseful and regrets the incident; that the incident took place out of a long standing tension pertaining to the accused being an illegitimate child and torture by the deceased who had vowed that he would not give land to him and which created an emotional situation on the accused; that the accused has sought for pardon from his stepfather; that the accused is sickly and suffers from cancer and that his family has promised to take him for medication elsewhere instead of him withering/wasting away in prison; that this court is hatched to weigh the human actions of the accused and to take note the fact that the accused is not beyond redemption and that this court do balance justice with mercy and temper the sentence and thereby impose a non-custodial sentence.



3. Counsel for Prosecution M/s Kerubo submitted that in as much as the accused is a first offender, a precious life was lost. That the family of the deceased have suffered since the deceased was their bread winner. She urged the court to consider the circumstances of the case and impose a sentence that will act as a deterrence.
4. This court called for a pre-sentence report by the probation department. The same is dated 18<sup>th</sup> July 2025. The same indicates inter alia; that the accused had joined the deceased in her chang'aa drinking den and that after they were through with their drinks, the chang'aa dealer requested the accused to assist in accompanying the deceased who was then too drunk as they use the same route to reach their homes only for the deceased to insult the accused by claiming that the accused was a child who was born out of wedlock and who could not walk with him. That the deceased further incensed the accused by claiming that the accused father could not sire a baby boy therefore his mother had to conceive him after engaging in extra marital affair. That the accused was annoyed since it was not the first time the deceased was hurling such abusive words in the past. That the accused kicked the accused on the leg and went away but the deceased managed to recover his balance and he followed him while continuing hurling abuses at him and further added that he would not allow such a child to inherit their land. That the accused later packed his bicycle as he went to relieve himself in the bush and on coming back he found the deceased had climbed onto his bicycle but lost balance and fell down and thereby sustained an injury on his left ear. That the accused is praying for a non-custodial sentence as he is suffering from poor health which has made him to be isolated in prison remand and being taken to hospital on weekly basis without improvement. That he did not plan what happened to the deceased. That the deceased is a paternal uncle to the accused. That the victim's wife has not received any apology or reconciliation attempts. That the community is still hostile to the accused for what he did. That he used to beat his step father in the past but which were not reported to the authorities. That a non-custodial sentence is not suitable since the irate members of public are still bitter and that they would have lynched him on the material day had he not escaped and sought refuge at the police station. That the accused abused drugs (bank and alcohol). That it was recommendation of the investigating officer that the accused is not suitable for a non-custodial sentence.
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 v 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 v. R* (1990) eKLR.”

It is noted from the autopsy report conducted on the body of the deceased by Dr. Daniel Otieno of Bondo Sub County Hospital indicated that the cause of death as severe head injury and hemorrhage secondary to assault. From the autopsy report, it is clear that the deceased died a painful death after he was hit on the head. The injuries could not have enabled him to survive. Even though the deceased had hurled insults at the accused, the same did not warrant the accused to attack him in the manner he did. Indeed, the deceased had insulted the accused on the material date but the accused if angered could have



resorted to other channels of redress but not to kill the deceased. The accused could have approached the clan elder and local administration who would have resolved the dispute. The insults hurled by the deceased at the accused could not be said to be equal to the kind of injuries that the accused inflicted on the drunk and hapless deceased. The action by the accused was therefore unwarranted. Even if the deceased had claimed that the accused was not a bonafide member of the family, the accused could still resort to legal redress regarding the issue of division of family land. The presentence report also indicated that the accused abused alcohol and drugs and was known to have been assaulting his stepfather. Further, the report revealed that upon being insulted, he made it known to the deceased that he would wait for him on the way and deal with him. It is therefore, clear that the accused had planned to eliminate the deceased on the material date. Even though the accused has indicated that he is suffering from some serious illness, the presentence report is clear that the villagers are waiting to lynch him should he set foot in the area. Hence, accused's life is in danger and hence the need for a custodial sentence. Further, the accused's abuse of alcohol and drugs requires him to undergo some rehabilitation before being released back to the society. This court has to balance the circumstances of the accused and those of the victim and his family as well as the accused's illness. The issue of the accused's medication could easily be taken care of by the prison authorities as they have an obligation to see to it that all prisoners' health concerns are taken care of. I am of the view that a custodial sentence of two years and thereafter a sentence under probation for three (3) years is appropriate in the circumstances.

7. In the result, I order the accused herein Vincent Otieno Onyango to serve a sentence of two (2) years imprisonment from the date of arrest namely 19<sup>th</sup> March 2024 and thereafter to serve under probation for three years under the supervision of the Siaya County Probation Officer.

**DATED AND DELIVERED AT SIAYA THIS 1<sup>ST</sup> DAY OF AUGUST 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

Vincent Otieno Onyango ..... Accused

M/s Achieng ..... for Accused

M/s Kerubo ..... for Prosecution

Kevin/Kimaiyo ..... Court Assistant

