



**Republic v Ondieki (Criminal Case E003 of 2022)
[2024] KEHC 484 (KLR) (25 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 484 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAJIADO
CRIMINAL CASE E003 OF 2022
SN MUTUKU, J
JANUARY 25, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

NEMWEL NYARIKI ONDIEKI ACCUSED

SENTENCE

1. Nemwel Nyariki Ondieki, herein the accused, was initially charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of that offence showed that he had murdered Vincent Okemwa on March 2, 2022 at Kiserian Township, Kajiado West Sub-County within Kajiado County.
2. The accused took the plea on that charge of murder on May 19, 2022. He pleaded not guilty.
3. Pending the hearing of the case, the accused offered to enter into a plea bargaining agreement with the state, which offer was accepted. The proceedings in respect of the Plea Bargaining Agreement were conducted On July 19, 2023 during which time the accused pleaded guilty to the lesser charge of manslaughter after the prosecution amended the charge from murder to manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. The particulars of this charge are that on the March 2, 2022 at Kiserian Township Kajiado West Sub-County within Kajiado County unlawfully killed Vincent Okemwa.
4. The facts of the charge were presented in court and showed that the accused and the deceased, both employed as caretakers, were friends and used to drink together. On March 2, 2022 a disagreement ensued between them after drinking and they started fighting. They parted ways but on the following day on March 3, 2022, they resumed fighting which ended up at the kitchen. The accused picked a panga and cut the deceased on the neck and left him inside the house. He returned later to check on him and found that he had died. He panicked and escaped to his rural home in Kisii.



5. Their employers started looking for them. The accused's employer called him on his mobile number. The accused told him that he had killed the deceased at the store in the kitchen. This is where the body of the deceased was found. It was taken to the City Mortuary where the postmortem was done. It confirms that the deceased died as a result of excess hemorrhage from neck injury due to sharp force trauma.
6. The accused was arrested on March 6, 2022 in Kisii. Facts revealed that he had attempted to take his own life by ingesting some poisonous substance. He had been treated at Gesusu Level III Hospital and discharged on March 7, 2022. He was escorted to Kiserian Police Station on 9th March 2022 and charged with murder which has now been reduced to manslaughter.
7. The accused admitted the facts as presented. This court found him guilty of the manslaughter and convicted him on his own plea of guilty.
8. The court called for a pre-sentence report which was filed on September 25, 2023. I have read the report and noted its contents. The report reveals that the accused and the deceased were arguing over a girl whom the accused said was his girlfriend. He accused the deceased of dating the girl. The report recommends a probation sentence in order for the accused to be assisted through counselling and rehabilitation into the community.
9. During mitigation hearing on September 25, 2023, Mrs Njagi for the accused told the court that the accused is a third born in a family of five children and a father of 2 children aged 12 years and 5 years; that his family rely on him for upkeep; that the accused is soft-spoken person who suffers from hallucinations and that he comes from a humble background. Court was told that the accused is a first offender and is remorseful for his actions; that he did not pre-meditate killing his friend and that it was due to intoxication. He pleaded with the court for leniency and non-custodial sentence.
10. Counsel for the prosecution submitted that the accused entered into a plea bargain agreement early without wasting court time; that he has no previous criminal records and that although he is a first offender and remorse, a life was lost.
11. I have considered the circumstances surrounding this offence and the attitude of the accused towards the offence. He has accepted his responsibility in killing his friend. The pre-sentence report, although not binding to the court, is favourable. For justice to be seen to have been done, especially by the family of the deceased, it is my considered view that a two-year prison jail term followed by 2 years non-custodial sentence under the supervision of the probation office is sufficient sentence. He will also benefit from counselling.
12. Orders shall issue accordingly.

DATED, SIGNED AND DELIVERED THIS 25TH OCTOBER 2023.

S. N. MUTUKU

JUDGE

