



**Republic v Oteyo alias Echumi (Criminal Case E007 of 2023)  
[2024] KEHC 5343 (KLR) (24 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 5343 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE E007 OF 2023**

**JN KAMAU, J**

**APRIL 24, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**ANDREA OPELE OTEYO ALIAS ECHUMI ..... ACCUSED**

**SENTENCE**

1. The Accused person was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) Cap 63 (Laws of Kenya). He entered into a Plea Agreement on 23<sup>rd</sup> April 2024 whereupon this court convicted him of the offence of manslaughter contrary to Section 202 as read with Section 205 of the [Penal Code](#).
2. The facts of the case were that on 11<sup>th</sup> April 2023, the Accused person, Andrea Opele, was in his farm weeding his maize when the deceased, Andrew Otemba Njeche, went to his farm and a confrontation ensued. As a result of the said confrontation, the Accused person assaulted the deceased using the handle of the jembe which he had. He hit the deceased on the head and hand.
3. The deceased fell down and the Accused person dragged him. The Accused person returned to his farm, picked one of his clothes and covered the deceased with it and stepped on him on the chest. The deceased sustained injuries on the head, the left upper arm was broken and bruises on the chest. The deceased was rescued by members of the public who had heard the commotion. They rushed him to Emusire Dispensary for treatment.
4. He was later referred to Vihiga County Referral Hospital where he was admitted. On 19<sup>th</sup> April 2023, he succumbed to the injuries that he sustained.
5. The matter was reported to Luanda Police Station by one David Mabinda, a brother of the deceased and investigations commenced.



6. The post mortem was conducted on 26<sup>th</sup> April 2023 and the cause of death was severe head injury secondary to trauma from blunt object.
7. The Accused person was arrested and was charged with the offence before court. The murder weapon, the jembe, was recovered from his house and the same was produced as an exhibit in this case and marked as Exhibit 1.
8. Having entered into a Plea Agreement, the Accused person urged this court to sentence him to five (5) years. On its part, the Prosecution recommended a sentence of seven (7) years imprisonment.
9. In his mitigation, he stated that he was remorseful. He pointed out that deceased was his friend since childhood and that he had no intention to commit the offence. He asserted that the two (2) families had met and discussed reparation issues between them and that they were instrumental in paying for the deceased's medical and funeral expenses.
10. He pointed out that he was a drug user, specifically bhang, before the incident. He was emphatic that the offence was not pre-meditated. He admitted that he had not used any drug since his arrest. He sought for a lenient sentence to support his rehabilitation.
11. On its part, the Respondent submitted that the deceased's family was still bitter about the incident. It pointed out that the said family indicated that the deceased was mentally challenged, a fact that was well known by the community and did not therefore deserve to be killed. It asserted that the death of the deceased was a big loss to his family and that they recommended a custodial sentence which would serve as a lesson to the Accused person and for the sake of his own rehabilitation. It added that the term he would serve would give him a chance to change or mend his ways.
12. According to the Pre-Sentence Report of Fanny Masinde, Probation Officer Vihiga dated 24<sup>th</sup> November 2023 and filed on 19<sup>th</sup> December 2023, the Accused person was aged sixty (60) years. He dropped out of school in class three (3) due to financial difficulties. He engaged as a shamba boy and in casual construction jobs in Kakamega. He also engaged in subsistence farming.
13. He had never married because he feared the cost of living. He was of good health although he had dental problems. He understood the gravity of the offence he committed but was still in denial even after conviction.
14. His mother reported that the deceased was mentally challenged and that he attacked his son while he was digging at the shamba. She pointed out that she did not understand why her son was arrested and remanded since the offence was committed in self-defence and also compensation done to the victim's family. The Accused person's siblings desired that he be considered for a non-custodial sentence since they described him as a good person who had never wronged anyone.
15. The secondary victims decried the death of the victim and were resentful towards the offender. They were opposed to a non-custodial sanction.
16. The Local Administration reported that the Accused person smoked bhang and pretended to be mad. They recommended that he be imprisoned for the offence. The community also raised strong objections towards any likelihood of the Accused person being considered for a non-custodial sentence.
17. In view of the negative Pre-Sentence Report, the Probation Officer did not recommend a non-custodial sentence.
18. Notably, sentencing is one of the most intricate aspects of trial. Indeed, a trial does not end unless a sentence has been meted out. The principle of sentencing is fairness, justice, proportionality and



commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya have added community protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.

19. It was important that the sentence communicate to the community, condemnation of his criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence.
20. The sentence also had to be one that was hinged on retributive justice for the secondary victims.
21. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing him, chances of the Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
22. Killing of a person is an abomination in the society and that explains why the Accused person's community did not want him released on a non-custodial sentence. Justice not only needed to be done but it had to be seen to be done.
23. Although he had sought leniency, it was clear that he killed the deceased while he was under the influence of drugs, in particular, bhang. Be that as it may, from the facts of the case, it appeared to this court that it was the deceased who approached him in his farm and an altercation ensued which led him to assault the deceased. The Accused person did not go out to look for the deceased to assault him as in other normal cases of murder where the murderer goes to where the victim is. If the deceased had not gone to the Accused person's farm, he would not have been assaulted.
24. There had been attempts to resolve this matter traditionally. The Accused person's family had also met the deceased's medical and funeral expenses which showed that the incident was deeply regretted.
25. Having considered the facts of this case and the Accused person's mitigation and that of the Prosecution, this court came to the firm conclusion that a sentence of six (6) years would be suitable and adequate herein and for purposes of the rehabilitation of the Accused person from drug use which contributed to him having assaulted the deceased leading to his death, for the deceased's family and community to feel a sense of retribution and for the Accused person and would be offenders to be deterred from committing a similar offence.

## **DISPOSITION**

26. Accordingly, it is hereby directed that the Accused person be and is hereby sentenced to six (6) years imprisonment to run from today. The period he spent in custody from when he was arrested on 26<sup>th</sup> March 2023 to 23<sup>rd</sup> April 2024 be and is hereby taken into account while computing his sentence in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
27. Orders accordingly.

**DATED and DELIVERED at VIHIGA this 24<sup>th</sup> day of April 2024**

**J. KAMAU**

**JUDGE**

