

Case ID: [2026] KEHC 312 (KLR) Copy

Title: Republic v Odenyo [2026] KEHC 312 (KLR) Copy

Court: High Court

Judges: DK Kemei

Date: 23 January 2026

Parties: Republic v Odenyo [2026] KEHC 312 (KLR) Copy

Summary: REPUBLIC OF KENYA

legal\_issues: []

decision: The accused herein Evans Otieno Odenyo 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 15th December 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 particulars are that on 11th day of December 2024 at Onono village in Nyabeda Sub Location, in Gem Sub County within Siaya County, unlawfully killed one Michael Owino Alumba. The accused pleaded guilty to the charge and facts and was convicted accordingly.

legal\_principles: []

---- JUDGMENT TEXT ----

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. E054 OF 2024

REPUBLIC .....PROSECUTION

VERSUS

EVANS OTIENO ODENYO.....ACCUSED

RULING

The accused herein Evans Otieno Odenyo 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 15th December 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 particulars are that on 11th day of December 2024 at Onono village in Nyabeda Sub Location, in Gem Sub County within Siaya County, unlawfully killed one Michael Owino Alumba. The accused pleaded guilty to the charge and facts and was convicted accordingly.

The sentencing hearing proceeded on 14/1/2026. Mr. Odhiambo for the defence submitted inter alia; that the accused is a first offender; that he is remorseful over the offence; that he has equally sought for pardon from the family of the deceased; that he has been in custody since 28th October 2024; that he has not pleaded guilty; that even though the pre-sentence report is negative, he seeks for leniency.

Mr. Soita for the prosecution submitted inter alia; that he aligns himself with the contents of the pre-sentence report; that the circumstances leading to the death of the deceased are tragic; that the state seeks for a custodial sentence since the family of the deceased require justice in the matter.

This court called for a pre-sentence report by the Probation department. The same is dated 12/1/2026

and indicates inter alia; that the accused prepared two avocados to eat and placed them on the table but decided to lace one with rat poison to help in eliminating rats; that he went out into the bathroom but only to find out the deceased breathing in pain on the floor and then learnt that the deceased had consumed one of the poisoned avocado and that in panic he decided to conceal the body and later in the evening packed it in a crate of soda tied it onto his bicycle and disposed it in a nearby farm; that the body of the deceased was later discovered by villagers leading to his arrest as he was the last person having been seen talking with the deceased before he disappeared; that the accused pleads for leniency claiming that he has learnt his lessons; that the family of the accused praying for a non-custodial sentence but they have not reached out to the family of the deceased for reconciliation since they too are still bitter after their houses and property were destroyed during the incidence; that the deceased was aged seven (7) years and was due to join PP1 for his school education; that the death of the deceased has affected his parents emotionally and psychologically and that they fear for their lives after the accused who is still in custody sent threats to them to the effect that once released, he will avenge by also burning their homestead; that the community and the local administration maintain that they cannot guarantee the safety of the accused since the villagers are still irate; that the home environment is still very hostile and not conducive for a comeback or any re-integration; that the probation officer recommends that the accused serves a custodial sentence.

I have given due consideration to the mitigation submissions of learned counsels and the pre-sentence report. Under Section 205 of the Penal Code, the maximum sentence for manslaughter is life imprisonment. However, the maximum sentence is usually reserved for the worst form of offenders. Looking at the circumstances of the case, I am of the view that the accused does not merit a sentence of life imprisonment. It is noted that the offence was committed as a result of the accused herein put poison on some avocados and placed them on the table which were later eaten by the deceased and who died as a result. Further, it transpired from the evidence that the accused herein had earlier met the deceased and invited him to come to his house to eat avocados and hence after the deceased disappeared, his family confronted the accused over the missing boy since he was the last person to have been with him and further backed by the deceased's siblings who confirmed that the deceased informed them that he was going to the home of the accused to pick avocados. Hence, the deceased met his tragic death thanks to the accused who had planned for his demise. It is trite that all homicides are unlawful unless authorized by law. It is clear and obvious that the accused must have been upset by the habit of young children entering his farm and stealing his fruits. Had the accused resorted to other channels of seeking redress over the invasion of his farm by the victim and other children, the deceased would be alive today. The action of the accused placing rat poison on the fruits in order to get rid of the deceased was unlawful and thus the death was unwarranted.

The circumstances leading to the death of the deceased are tragic. The body of the deceased was found lying dead in a thicket and stashed in a sack. The pathologist, Dr. Victor Ochieng (PW6) noted that the body had facial bruises on the cheeks and dislocation of left elbow and left hip. That there was a mark on the neck. That the head and neck had hematoma the cervical spinal column had an injury. That he formed the opinion that the cause of death was brain hypoxic injury secondary to cardio pulmonary failure secondary to asphyxiation due to assault. This seems to conflict with the accused's claim that the deceased had eaten the poisoned avocado. It is clear that the deceased was deliberately killed in that his life was snuffed out as confirmed by the injuries on the autopsy report. It is trite that all homicides are unlawful and hence the deceased did not deserve to die even if he had trespassed into the accused's compound in search of fruits. It is noted that the deceased was just a young child aged about seven (7) years and was innocent. The accused person ought to have used other avenues of redress over the alleged theft of his avocados and that had he done so, the deceased would be alive today. The deceased did not deserve to die in the manner that he did.

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 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] KLR”

8. According to the Judiciary Sentencing Policy Guidelines (2023), sentencing of offenders should take into account the following objectives:

- a) Retribution - To punish the offender for their criminal conduct in a just manner.
- b) Deterrence - To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.
- c) Rehabilitation - To enable the offender to reform from his/her criminal disposition and become a law-abiding person.
- d) Restorative justice - To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender’s contribution towards meeting those needs.
- e) Community protection - To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender’s criminal acts.
- f) Denunciation - To clearly communicate the community’s condemnation of the criminal conduct.
- g) Reconciliation - To mend the relationship between the offender, the victim and the community.
- h) Reintegration - To facilitate the re-entry of the offender into the society.

9. Looking at the circumstances of the offence as well as the pre-sentence reports and the mitigation of the accused herein, it is noted that the accused killed the deceased as he was upset by the constant theft of his fruits from his farm by children from the neighbourhood. However, his conduct in wrenching the deceased neck thereby killing him instantly and then stashing the body in a crate and a sack and then dumping it in a nearby thicket show that the accused was so inhuman. The accused should have used lawful channels by engaging the local authority regarding the theft of his farm fruits but not to take the law into his hands. This was unwarranted.

10. It is noted that the accused has been in custody since 11th December 2024 and even though the plea bargain has been presented to court quite at the tail end of the proceedings, the presentence report is not favourable for a non-custodial sentence. The same reveals that the accused is a troublesome person in the village as he has in the past harassed his father due to his thieving ways and which forced the father to severely beat him leading to his present physical challenges. It also reveals that the villagers are still hostile to him and that his life will be in danger if he sets foot in the village. The villagers also destroyed his home and property forcing his parents to relocate elsewhere. The local administration are opposed to any non-custodial sentence as they cannot guarantee the safety of the accused. It is also instructive that the action of the accused in killing the innocent and hapless victim was quite monstrous and shocking to the villagers and the parents of the deceased. The deceased then aged seven years was about to join Grade 1 in school before he was killed. Even though the accused has pleaded guilty to the charges of manslaughter, the same has come at the tail end of the proceedings and therefore there is no evidence that the same has saved judicial time. The probation officer has recommended a custodial sentence for the accused. I find the same merited as the accused requires to undergo comprehensive custodial rehabilitation before being allowed back to the community.

11. In the result, I order the accused herein Evans Otieno Odenyo to serve a sentence of fifteen (15) years imprisonment which shall commence from the date of arrest namely 11th December 2024.

Orders accordingly.

Dated and delivered at Siaya this 23rd day of January 2026.

D. KEMEI

JUDGE

In the presence of:

Evans Otieno Odenyo.....Accused.

Odhiambo.....for Accused.

Soita.....for Prosecution.

Maureen/Kimaiyo.....Court Assistant.