



Case Number:	Criminal Appeal No 80 of 1990
Date Delivered:	02 Dec 1991
Case Class:	Criminal
Court:	Court of Appeal at Kisumu
Case Action:	Judgment
Judge:	Riaga Samuel Cornelius Omolo, Abdul Majid Cockar, Joseph Raymond Otieno Masime
Citation:	Andhiro v Republic[1991]KLR
Advocates:	-
Case Summary:	<p style="text-align: center;"><b>REPUBLIC OF KENYA</b> <b>Andhiro v Republic</b></p> <p style="text-align: center;">Court of Appeal, at Kisumu December 2, 1991</p> <p style="text-align: center;">Masime, Cockar JJ A &amp; Omolo Ag JA</p> <p style="text-align: center;">Criminal Appeal No 80 of 1990</p> <p style="text-align: center;">(Appeal from a sentence of the High Court of Kenya at Kisii (Patel J) dated 8/11/89 in Criminal Case No 49 of 1989)</p> <p><b><i>Criminal Practice and Procedure - plea of guilty - prosecution withholding cautionary statement containing exculpatory facts - whether proper.</i></b></p> <p><b><i>Criminal Practice and Procedure - pauper brief - accused person facing murder charge not represented - whether proper.</i></b></p> <p>The appellant, who was initially charged with the offence of murder, pleaded guilty to the lesser offence of manslaughter. He was convicted and sentenced to 12 years imprisonment.</p>

	<p>Before his sentencing in the High Court, the appellant expressed his remorse and promised to rehabilitate himself and become a useful member of the society. The appellant did not have legal representation. In his cautionary statement the appellant had given which was not brought to the attention of the trial judge, the appellant had given reasons for killing the deceased. He claimed the deceased had abused him.</p> <p><b>Held:</b></p> <p>1. If the nature of the abuse had come to the attention of the judge then he would not have passed the sentence that he had imposed.</p> <p>2. It is the practice of the Court that an accused facing a charge of murder be provided with free legal aid. In this case the appellant was not represented by an advocate and yet the judge proceeded to take a plea. That was not a practice to be encouraged and it can lead to an order for retrial.</p> <p><i>Appeal allowed sentence reduced.</i></p> <p><b>Cases</b></p> <p>No cases referred to.</p> <p><b>Statutes</b></p> <p>Penal Code (cap 63) section 205</p>
Court Division:	Criminal
History Magistrates:	-
County:	Kisumu
Docket Number:	-
History Docket Number:	Criminal Case No 49 of 1989
Case Outcome:	Appeal allowed.
History County:	Kisii
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

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**REPUBLIC OF KENYA  
Andhiro v Republic**

**Court of Appeal, at Kisumu  
December 2, 1991**

**Masime, Cockar JJ A & Omolo Ag JA**

**Criminal Appeal No 80 of 1990**

**(Appeal from a sentence of the High Court of Kenya at Kisii (Patel J)**

**dated 8/11/89 in Criminal Case No 49 of 1989)**

**JUDGEMENT**

The appellant was charged with the offence of murder but on the day of the commencement of the trial the appellant offered a plea to the lesser charge and in consequence the charge was reduced to that of manslaughter contrary to section 205 of the Penal Code to which offence, when charged, he pleaded guilty and was convicted accordingly and sentenced to a period of 12 years imprisonment. He has now appealed to this Court against sentence.

Briefly the facts as stated to the Court and accepted by the appellant were that on 17th January, 1988, at about 8.00 pm at Bondo Primary School the deceased, headmaster of the school, was supervising a test in a class of std VII when the appellant entered the class-room and after complaining briefly of some grievance he drew out a knife from the pocket of his trousers and stabbed the headmaster twice as a result of which the latter died. In his mitigation the appellant had referred to ten commandments, of his having fallen to temptation and of his repentance. He explained about his family and 3 children.

The learned judge had given due consideration to the appellant's age that he was then 32 years old and to the mitigating factors that the appellant had urged. His grounds of appeal to this Court are more or less the same that he advanced before the Superior Court. He has also promised to rehabilitate himself in order to become a useful member of the society. We have carefully considered the grounds of appeal against the sentence. A deplorable feature that we have noticed was that the appellant was not represented by an advocate in the Superior Court. The appellant was facing a charge of murder before the Superior Court and it is the practice of our courts that in such a case the accused is to be provided with free legal aid. In this case the appellant was not represented by an advocate and yet the judge proceeded to take a plea and finalise the matter. That is not a practice to be encouraged in future. It can lead to an order for retrial. However, the appellant now confirmed to us that he had on his own wished to plead guilty to manslaughter because he had committed the offence. But it is clear that because of lack of legal representation the attention of the judge was not drawn to the charge and caution statement made by the appellant to the police in which he had given his reasons for his violent action. He said therein that the deceased had abused him as a eunuch and a useless man since he had lost his manhood which abuse, the appellant claimed, had infuriated him. He also said that the deceased was much stronger than he was and hence his use of the knife. In our view of the nature if the abuse had come to the attention of the judge then he would not have passed the sentence that he imposed. Being mindful of all the factors involved in this unfortunate killing we reduce the sentence of imprisonment to 8 years effective from the date of the original sentence. To that extent the appeal is allowed. Orders accordingly.

*Dated and delivered at Kisumu this 2nd day of December, 1991.*

**JOSEPH RAYMOND MASIME**

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**JUDGE OF APPEAL**

**A. M COCKAR**

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**JUDGE OF APPEAL**

**RIAGA S OMOLO**

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**AG. JUDGE OF APPEAL**



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