



**Republic v Odiko & another (Criminal Case 20 of 2017)
[2023] KEHC 26154 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 26154 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE 20 OF 2017
RE ABURILI, J
NOVEMBER 30, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

JANES O. ODIKO 1ST ACCUSED

HABBAKUK O. ODWAR 2ND ACCUSED

RULING

1. On 16th November 2023, this court delivered judgment in which it found the two accused persons herein, Janes O. Odiko and Habbakuk O. Odwar Guilty of the offence of murder of the deceased Lucas Onyango Bonyo and convicted them accordingly.
2. The court then heard mitigations from their respective counsel and ordered for Presentence Reports on each of the accused persons and Victim Impact Statements on 29th November 2023.
3. I have considered the mitigation by each of the accused persons and the fact that they are first offenders. I say first offenders because the prosecution did not avail any criminal records on each of the accused persons, despite the social inquiry reports by the Probation Officer suggesting that each of the accused persons have a bad history of criminality in the society.
4. The 2nd accused denied being an ex-convict in Nyando Law Courts and no evidence of previous conviction was availed. The 1st accused also denied being or belonging to any criminal gang that violently attacks people in the community as reported by the Probation Officer.
5. Nothing could have prevented the prosecution from obtaining copy of records on both accused persons or to get evidence of any reports made against the accused persons' character from the local police station.



6. The Investigating Officer could easily have accessed such material and filed it on oath. I conclude that accused persons are first time offenders.
7. The accused persons are said to be remorseful as per their mitigations and that they are sole breadwinners of their families who depend on them. They ask for leniency.
8. I have also considered the Victim Impact Statement of Caleb Otieno Obonyo, the younger brother to the deceased who stated on oath that they are saddened and affected by the loss of their breadwinner. The deceased left behind a widow and 5 children to fend for themselves. He was a mechanic and his widow now hawks food items to cater for herself and her children. He was a pillar to his family.
9. I have also considered the circumstances under which the offence herein was committed. The accused persons violently attacked the deceased and stabbed him to death. His only sin was that of cautioning them against damaging his Motor Vehicle which was parked in the area where the two were allegedly having a duel with others.
10. There was absolutely no provocation of the accused person by the deceased and the fact that the two had such crude weapons ready to attack and kill meant that they were prepared to cause loss of a precious life.
11. Section 204 of the *Penal Code* provides for death penalty upon conviction for murder. However, this penalty is not necessarily mandatory as was pronounced by the Supreme Court in *Francis Karioko Muruatetu & Another vs Republic* [2017] eKLR. The trial court retains the discretion in sentencing having regard to the circumstances of each case and the mitigations.
12. Having considered all the above and the Judiciary Sentencing Policy Guidelines on the purposes and objects of punishment of convicted offenders, I exercise discretion and sentence each of the accused persons herein Janes O. Odiko and Habbakuk O. Odwar to serve forty (40) years imprisonment for the brutal murder of Lucas Onyango Bonyo.
13. The Right of Appeal to the Court of Appeal is fourteen (14) days of today guaranteed.
14. This file is now closed. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 30TH DAY OF NOVEMBER, 2023.

R. E. ABURILI

JUDGE

