

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. E001 OF 2020 [MURDER]

CORAM: HON. R.E. ABURILI, J

STATE.....PROSECUTION

VERSUS

GEORGE OMONDI OWAK.....ACCUSED

RULING ON SENTENCE

1. On 15th December 2021, this court delivered a judgment wherein the accused person herein **George Omondi Owak** was found guilty of the murder of **Geoffrey Ochieng Yamo**. I convicted the accused person for the offence of Murder as stipulated in **Section 203 of the Penal Code**. I then ordered for a presentence report which was filed on 20th January, 2022 by Milton Kasera, Probation Officer, Siaya County Office.

2. The accused person has mitigated saying he is a first offender, prays for leniency of the court, and that he is remorseful, is an orphan and prays for a non-custodial sentence. The Prosecution prays for a long term sentence of the accused, in the manner he unlawfully, killed the deceased, to balance out the interests of justice.

3. I have also considered the scanty Presentence report filed on 26/1/2022 on the social circumstances of the accused. Noting is said of the family of the deceased which is unfortunate as the court had asked the Probation Officer to get the victim's family and record Victim Impact Statements. Nonetheless, the accused who is a young man aged 25 years old is said to be remorseful and prays for leniency.

4. I have considered and the circumstances under which the offence of Murder was committed by the accused person herein. The accused did concessions during the hearing that he indeed stabbed the deceased although he claimed that it was the deceased and others who attacked him and that he was defending himself. The court did not buy his defence of self defence.

5. Punishment for murder, upon conviction, is death, as stipulated in **Section 204 of the Penal Code**. However, following the decision in the **Francis Muruatetu & Another Vs Republic[2017]eKLR**, the Supreme Court set a precedent and as a result, this court enjoys the judicial discretion to impose an appropriate sentence having regard to the circumstances of each case and the mitigations. The deceased did not deserve to die. The type of injuries he sustained show a calculated move by the accused to cause death or grievous harm.

6. Taking into account the Judiciary Sentencing Policy and Guidelines and objectives of the punishment, I hereby exercise and sentence the accused person herein, convict **George Omondi Owak** to serve 25 (twenty-five) years imprisonment.

7. Right of appeal is 14 days of today.

8. I so order.

9. File is closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 26TH DAY OF JANUARY 2022

R.E. ABURILI

JUDGE