



**State v Okoth (Criminal Case E002 of 2020) [2022] KEHC 527 (KLR) (26 April 2022) (Ruling)**

Neutral citation: [2022] KEHC 527 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL CASE E002 OF 2020  
RE ABURILI, J  
APRIL 26, 2022**

**BETWEEN**

**STATE ..... PROSECUTION**

**AND**

**NICHOLAS WADHALA OKOTH ..... ACCUSED**

**RULING**

1. I have considered the mitigations by the accused person and his advocate Mr. Mshindi. I have considered the address by the Prosecution Mr. Kakoi Senior Principal Prosecution counsel and the circumstances under which the deceased was viciously butchered to death.
2. I have also taken into account the Judiciary Policy Sentencing Guidelines and the principles of sentencing as set out in the *Francis Karioko Muruatetu & Another Vs Republic* [2017] eKLR case.
3. Sentencing is in the discretion of the court, although Section 204 of the Penal Code provides that punishment for murder upon conviction, is death. Death sentence is no longer mandatory. However, depending on the circumstances of each case and mitigation, the court is not deprived of the power to impose death sentence as an appropriate sentence to a deserving convict.
4. The accused is the nephew of the deceased. The accused was orphaned at age 4 upon which his uncles, the deceased and his grandmother, took him in and raised him up. He is now 30 years old. He was married with 2 children but according to the Social Inquiry Report filed as a Pre-bail Assessment Report, it was reported that his wife had left him. He has one sister. The accused person's wife is said to have left him because he used to beat her. He is described in the Pre-bail report as an unreasonable, sadistic and violent person. That he used to abuse bhang and alcohol.
5. This Court has observed the demeanor of the accused person in Court even during mitigation. He feels nothing even after being shown the photographs of his deceased uncle with mutilated genitals. He is indeed, sadistic. He does not merit the discretion of this court, as there are no mitigating circumstances to warrant such a gruesome murder of an uncle and caregiver by an orphaned nephew. Live and let live.



6. The accused does not deserve any leniency and the opportunity to live with other people in the community. If he did that to his own uncle, and caregiver, he can do worse to any other person who is not related to him.
7. For all the above reasons, I find that the accused person is not a suitable convict to be rehabilitated or to be reformed. He deserves death sentence. Accordingly, I hereby sentence the accused/convict herein Nicholas Wadhala Okoth in accordance with Section 204 of the [Penal Code](#) to suffer death for the gruesome murder of the deceased Joshua Cleophas Ouma.
8. Right of Appeal is 14 days of today.
9. File closed.
10. I so order.

**DATED, SIGNED AND DELIVERED AT SIAYA IN OPEN COURT, THIS 26<sup>TH</sup> DAY OF APRIL 2022**

**R.E. ABURILI**  
**JUDGE**

