



REPUBLIC OF KENYA



**KENYA LAW**

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**State v Austine Otieno Odhiambo alias Wuod Othialo & another (Criminal Case E028 of 2021) [2022] KEHC 11597 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 11597 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL CASE E028 OF 2021  
RE ABURILI, J  
JUNE 30, 2022**

**BETWEEN**

**STATE ..... PROSECUTION**

**AND**

**AUSTINE OTIENO ODHIAMBO ALIAS WUOD OTHIALO ..... 1<sup>ST</sup> ACCUSED**

**JOSEPH ODHIAMBO WERE ALIAS WERE ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused person Austine Otieno Odhiambo alias Wuod Othialo was on 29/6/2022 convicted of the offence of Murder contrary to section 203 as read with section 204 of the [Penal Code](#) after finding him guilty of the offence of Murder as charged.
2. Due to network (internet challenges), the court had to adjourn for mitigation and sentence today as Mr. Oduol Advocate for the accused person was appearing virtually. Mr. Oduol and his client have mitigated.
3. The accused is a first offender as no previous criminal records have been filed. He is remorseful and seeks the court's leniency. He seeks for a non-custodial sentence. He regrets the offence. He apologizes to the family of the deceased. He now claims that the deceased attacked him after waylaying him on the road and after they quarreled at a chang'aa den and that he acted in self defence but he overpowered the deceased. He is 27 years old.
4. The deceased's mother Sophia Akinyi Onyango has given her Victim Impact Statement on oath saying the deceased was her first born son and he was a widower, he left a daughter who is now at the University. The mother declines any apology from the convict because she believes the accused is a serial killer who has not been caught before. That last aspect has no proof before this court, nonetheless.



5. That said, a precious life was lost in the hands of a very young person who acted quite viciously and cut the deceased on his neck. The cut is so deep, from the photographs produced in court that it runs across the right side of the chest below the right clavicle through and according to PW5, Dr. Juma Gabriel, it measures 15 cm by 20cm. The cut also severed internal carotid vein and exposes the right jugular vein.
6. Those are not the kind of injuries that could have been inflicted in self defence as belatedly claimed by the convict herein. The accused acted mercilessly. He deserves severe punishment. Live and let live.
7. Punishment for Murder is death. However, this is not mandatory in view of the sentencing principles espoused in the *Francis Muruatetu Karioko & Another Versus Republic* [2017]eKLR.
8. This court has discretion in sentencing, having regard to mitigations and circumstances under which the offence was committed. The accused throughout the trial denied that he ever unlawfully killed the deceased. In mitigation, he raises self defence which, even if the court was to accept, is too late. In addition, the injuries sustained by the deceased do not support that defence.
9. The accused is between 26-27 years old and is unmarried. There is no evidence that he has any obligations or responsibilities to third parties. He killed an innocent man. He is an irresponsible young man. He deserves a long custodial sentence.
10. I hereby exercise discretion and sentence the accused person Austine Otieno Odhiambo to serve fifty (50) years imprisonment to be calculated from the date of his arrest on 8/7/2021. I so order.
11. Right of Appeal 14 days to the Court of Appeal explained.
12. File is closed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT SIAYA THIS 30<sup>TH</sup> DAY OF JUNE, 2022**

**R.E. ABURILI**

**JUDGE**

