



**State v Otieno (Criminal Case 10 of 2020) [2022] KEHC 12606 (KLR) (30 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 12606 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL CASE 10 OF 2020  
RE ABURILI, J  
JUNE 30, 2022**

**BETWEEN**

**STATE ..... PROSECUTION**

**AND**

**HENRY OCHIENG OTIENO ..... ACCUSED**

**RULING**

1. On 29/6/2022, the accused person herein, Henry Ochieng Otieno was convicted of the offence of Murder contrary to section 203 as read with section 204 of the *Penal Code* upon being found guilty. However, due to power outage and internet not functioning, his counsel, Mr. Okello who was online could not mitigate.
2. The accused and his counsel have mitigated seeking for leniency from the court. The accused says that he never planned to kill his child. That may so, but there was transferred malice in that his intention was to beat his wife who was carrying the innocent child on her back. As a result, he hit the child and from the injuries sustained as per the postmortem report, the child suffered fracture of the skull. The mother of the deceased too sustained injuries as a result of which she could not testify in this case due to the debilitating injuries.
3. The accused is a young person aged 26 years old and he was the father to the deceased. He does not have any other child or wife. He has no responsibilities to third parties. The vicious acts of the accused led to loss of innocent life of a young child, who deserved protection from harm by the accused person being its father. The accused claims that he was intoxicated, yet no defence of intoxication was even proffered for this court to consider. He however regrets the incident and prays for leniency of the court.
4. Having considered all the above mitigations and the circumstances under which the offence was committed, I am persuaded that a custodial sentence is appropriate for the accused person herein for him to be rehabilitated and reform from irresponsible vicious behavior.



5. Accordingly, although punishment for Murder is death, I exercise discretion and sentence the accused person Henry Ochieng Otieno to serve twenty-five (25) years imprisonment to be calculated from the date of his arrest.
6. Right of Appeal 14 days of today to the Court of Appeal.
7. File closed.

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

**R.E. ABURILI**

**JUDGE**

