



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**CRIMINAL CASE NO. 16 OF 2016**

**STATE.....PROSECUTION**

**VERSUS**

**MORRIS ODUOR OTIENO.....ACCUSED**

**RULING ON SENTENCE**

1. On this 29<sup>th</sup> day of July 2020 this court has found the accused person MORRIS ODUOR OTIENO GUILTY of the offence of murder as charged and convicted him accordingly. I then reserved sentence after mitigation. I have considered the fact the accused person is a first offender and that he did not lie to court on what happened by opting to remain silent in defence.

2. I have considered his mitigations that he is a family man, is remorseful and prays for leniency. The accused person has been in prison since September 2016 when he was arrested following the murder of the deceased. He readily admits in his mitigation that he killed the deceased but that in self defence. That defence ought to have been tendered in defence and not in mitigation as the court cannot take mitigation after a full trial to be a defence for the accused person. Looking at the scary photographs of the deceased, one is left with no option but to conclude that the murder was indeed a cold blooded murder by a person who did not want to leave the deceased fight for his life.

3. Every life is sacrosanct and no person has the right to take away the life of another except by law established. **Article 26 of the Constitution** guarantees every person the right to life which life begins at conception. The deceased too had a family and he deserved to live. Live and let live. There are established legal means of resolving disputes if any and killing one the way the accused butchered or pumped a panga into the head of the deceased who was his first cousin cannot be an acceptable way of resolving any dispute assuming there was one. The accused has not even told the court what kind of issue he had with the deceased meaning he harbored a grudge and intention to eliminate the deceased and on the material date he found the opportunity to do so. I have had the opportunity to see and hear the accused person mitigate in addition to his counsel's touchy mitigation. The accused has no human feeling in his mitigation. He is a selfish person who only thinks about his own life and how he wishes to return to his family. He wants to be released.

4. The accused has lost some temporary liberty. The deceased is lost forever not through natural death but by the cruel hand of the ruthless person in the person of the accused person herein. The accused person in my humble view, and from my own observation of his demeanor, is an extremely dangerous murderous person, and very vengeful. He does not deserve to live in the community with other people. He deserves to be kept away from the society for a considerably long time. Sentence for Murder is death Under Section 204 of the Penal Code. The circumstances of this case call for a stiffer Penalty in line with the sentencing guidelines. However, as the death sentence is not mandatory, I am inclined to exercise my discretion and sentence the accused to a custodial term which I hereby do and sentence the accused person Morris Oduor Otiemo to serve Fifty (50) years imprisonment taking into account the period already spent in Prison custody.

5. Right of explained.

6. Orders accordingly.

**Dated, Signed and Delivered at Siaya this 29<sup>th</sup> day of July, 2020**

**R.E. ABURILI**

**JUDGE**

**In the presence of:**

Mr. Ngetich h/b for Mr. Okachi Prosecution Counsel for the State

Mr. Ooro Adv. for the accused

Accused present

CA: Brenda and Ishmael