



**Republic v Odiyo (Criminal Case E009 of 2023)
[2025] KEHC 2029 (KLR) (14 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 2029 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E009 OF 2023
DK KEMEL, J
FEBRUARY 14, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

JOHN OTIENO ODIYO ACCUSED

SENTENCE

1. The accused herein John Otieno Odiyo has been charged with an offence of murder contrary to Section 203 as read with 204 of the *Penal Code*. Vide the judgment dated 17th January, 2025, the accused was found guilty and convicted accordingly.
2. Sentencing hearing took place on 3rd February, 2025. Mr. Ooro F, counsel for the defence, allowed the accused to present his mitigation. The accused stated *inter alia*; that he is remorseful for what transpired; that he prays for forgiveness; that he never intended to kill his son; that he prays to be pardoned; that he has been found guilty; that his former wife died and that the second wife did not take care of the children who later went away; that he opted to remain alone with his children; that if the court is inclined to imprison him, then it should consider him for a lenient period that will allow him to go back to his children; that he prays for forgiveness.
3. M/s Kerubo for the prosecution submitted *inter alia*; that the accused is a first offender; that a life was lost; that the deceased child could have become somebody of importance in future; that the prosecution relies on the pre-sentence report; that the accused is not fit to be given non-custodial sentence as he requires to be rehabilitated.
4. This court called for a pre-sentence report by the probation department. The same is dated 29th January, 2025. The same indicate *inter alia*: that the accused person's parents separated while he was still a toddler; that the offender grew up lacking love, guidance and mentorship of both parents; that the offender experienced a difficult childhood; that he grew up in the absence of both parents; that he



never attained any formal education; that he has distanced himself from his extended family members and has kept largely to himself; that this has contributed to his criminal behavior; that the offender was raised by a friendly Nubian family in Kibos Kisumu City since the father was not able to take care of him; that he was able to attend madrasa classes where he studied quaran; that he had minimal conduct with both parents; that he is a third born in a family of four siblings some of which left with the mother when they separated with the father; that his family disintegrated completely as a result of separation and finally the death of his father; that the accused person has a pertanal uncle and who retired from the police force and that the said family distanced itself from the offender citing atrocious nature of the offence; that the offender is violent towards his family and community members; that no family member had offered to support the offender's rehabilitation should the Court grant him non-custodial sentence. The community members and area administrators consider the offender as a threat to security; no one wished to have him rehabilitated in the community citing the heinous nature of the offence and his aggressive history; that the offender abuses substances; that the offender acknowledges the court's finding; that he does not take full responsibility for the offence; that he is manipulative and deceitful, and that he does not demonstrate genuine remorsefulness.

5. I have considered the mitigation by the accused. I have also considered the pre-sentence report filed by the probation department. Under Section 204 of the *Penal Code*, the punishment for murder is a sentence of death. However, following the decision of the Supreme Court in *Francis Karioko Muruatetu & 2 Others* (2017) eKLR, the mandatory nature of death sentence was declared as unconstitutional and that the courts should receive mitigating circumstances from the offender before imposing an appropriate sentence thereafter and that the court could as well impose a sentence of death if the circumstances warrant it.
6. From the post mortem report produced by Daniel Wanjovu Juma(PW4) as exhibit – 1 indicated that the injuries inflicted on the deceased comprised of swelling with blood stains all over the face, swelling with abrasive wound on the left parietal surface of the head with loss of hair; massive hemorrhagic congestion of the sub cutaneous tissue below the scalp expanding through the whole bitemporal surface posteriorly; the nervous system had extensive skull fracture with blood clots from the intracranial space spinning from left parietal region through occipital region and on the spinal column ending at the right temporal region approximately 24 cm in length. It was concluded that the the cause of death was as a result of extensive skull fracture secondary to severe blunt head trauma.
7. The circumstances leading to the death of the deceased are rather tragic. The deceased was a son to the accused herein. The deceased (Zedekiah Were) had sought food from a neighbour's house and which seemed to have angered the father who resorted to beating the deceased to death. The gruesome circumstances were aptly given by Laila Akinyi Otieno (PW1) who was a sister to the deceased. She stated that the accused came home while in an angry mood and got hold of the deceased viciously slapped him and that the deceased fell down. Then he lifted him, held him on both legs and then dropped him down on his head and later left him on a cold floor until the following morning when attempts to wake him up become futile since the deceased was on the throes of death. The deceased finally died. He died a painful death. The deceased and his siblings all relied on the accused for support since their mother had died earlier on. It was therefore the responsibility of the accused to care and protect the children. However, he failed in this duty and turned out to be a monster. The presentence report indicated that after this incident, the villagers realized that the children were in serious need of care and protection. Arrangements were immediately made the relocation of the children to a rescue centre. Going by this scenario, it is clear that the accused had gotten tired of the deceased and the other children and that he wanted to get rid of the deceased. This was quite unfortunate as the children were vulnerable and had nowhere to seek shelter and refuge.



8. As regards the sentence to be imposed, the Court of Appeal in the case of *Charo Ngumbao Gugudu v R* (2011) eKLR, held as follows:

“Further, the law is that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is thus not proper exercise for the court to fail to look at the facts and circumstances of the case in their entirety before settling for any given sentence. See *Ambani v R* (1990) eKLR.”

9. It is noted that the accused person has been in custody since the time of his arrest. This period will be taken into consideration pursuant to the provisions of Section 333 (2) of the *Criminal Procedure Code*. I find the circumstances of the case and the pre-sentence report calls for a custodial rehabilitation for the accused. I find that the custodial rehabilitation will benefit the accused person herein before he can be allowed to rejoin the community. The custodial rehabilitation will help to mould him to be a better individual before being released back to the society. The accused’s claim that he needs to go back and take care of the children sounds hollow in view of the fact that he was a danger to the children and that the state of the children was so bad leading to the said children being taken to a rescue centre.

10. In the result, I order the accused herein John Otieno Odiyo to serve a sentence of twenty (20) years’ imprisonment which shall commence from the date of arrest being 23rd March 2023.

DATED AND DELIVERED AT SIAYA THIS 14TH DAY OF FEBRUARY, 2025.

D. KEMEI

JUDGE

In the presence of:

John Otieno Odiyo..... Accused

Ooro F.for Accused

M/s Kerubo.....for Prosecution

Ogendo.....Court Assistant

