



**Republic v Olang'o (Criminal Case E024 of 2023)
[2025] KEHC 2567 (KLR) (6 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 2567 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E024 OF 2023
RE ABURILI, J
FEBRUARY 6, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

SAMUEL OGOLA OLANG'O ACCUSED

SENTENCE

1. The accused person Samuel Ogola Olang'o was in a judgment rendered on 31st January 2025 found guilty of the charge of murder and convicted under section 203 of the [Penal Code](#). The victim of the murder was his step brother Peter Caleb Bwana.
2. In his mitigation, the convict pleaded for leniency and stated that he did not intend to kill his brother. That he was remorseful and that he has a wife and children who depend on him. That he was left with his mother. He sought forgiveness from the widow of the deceased who gave a moving victim pact statement.
3. The accused is also a first offender as the prosecution had no record of any criminal record on him.
4. In the victim impact statement, the deceased's young widow, Joy Bwana explained that the deceased was survived by two widows, one of whom had suffered depression following the demise of their husband and was mentally unstable. That she was left with a pregnancy and a young baby who is now 3 years. The first wife has 5 children who are left orphaned and suffering because they depend on the maternal uncle of the deceased. They are all still in school and the deceased was the sole breadwinner for his young family. She narrated that herself and the children of the deceased fear for their lives. That they cannot go to their home in Chulaimbo because of the convict and his mother who are very hostile to them. That the convict's mother is worse because she incited the convict to kill the deceased. She painfully narrated how she would rather see the convict's mother in prison as well.



5. In sentencing, this court is guided by several factors. Mitigations and circumstances under which the offence was committed are some of the factors including guidelines stipulated in the *Francis Muruatetu & another v Republic* [2017] e KLR Case.
6. I have also taken into account the Revised Sentencing Guidelines, 2023 by the National Council on Administration of Justice at pages 66 and 67 wherein it is stated as follows:

“MURDER

- 5.2.2 The harm caused by such an offence is immeasurable. The sentence is not a measure of the value placed on the life of the victim. Therefore, the assessment of aggravating and mitigating features relating to the offence focusses on culpability. However, the victims’ family may wish to make a statement to the court about the impact of the offence.
- 5.2.3 In addition to the generic features contained in the GATS, features particularly relevant to murder may include but are not limited to:
- 5.2.4 Aggravating Factors in Murder Cases:
 - i. A significant degree of planning or premeditation.
 - ii. The mental or physical suffering inflicted upon the victim before death. Factors such as the type of weapon used, torture or inhuman or degrading treatment prior to death will be relevant.
 - iii. The use of duress or threats to enable the offence to take place.
 - iv. The vulnerability of the victim e.g., due to age or disability.
 - v. The fact that the victim was providing a public service or performing a public duty.
 - vi. Multiple victims or multiple perpetrators.
 - vii. Where the offence involved an abuse of trust. The relationship between the victim and the accused should be carefully considered.
 - viii. Offence was motivated by, or there was demonstrated hostility to the victim based on his or her race, gender, sex, sexual orientation (or presumed sexual orientation), pregnancy, marital status (so called ‘honour killings’ for example), health status (e.g., murder occurred because of the HIV status of the victim, or albinism), ethnicity, culture, dress, language, birth, or religious orientation (or presumed religious orientation).
 - ix. A history of assaults, threats, or coercion upon the same victim.
 - x. Absence of self-defence or provocation.
 - xi. The offence involved deliberate drugging or stupefying of the victim.



- xii. Proven abduction or kidnapping of the victim before the murder was committed.
- xiii. Where a demand for ransom was made, signifying a financial motive.
- xiv. Concealing, destroying, or dismembering the body.
- xv. Where the murder was conducted in furtherance of a ritualistic practice such as witchcraft.

5.2.5 Mitigating features relating to murder might include:

- i. Lack of premeditation.
- ii. The offender suffered from a mental disorder or mental disability which lowered his degree of blame.
- iii. In a case of joint enterprise, the role the offender played may be lower than his co-accused. For example, in the resentencing of the Applicants in *Francis Karioko Muruatetu & 6 others v Director of Public Prosecution* [2019] eKLR the Judge categorised the offenders into four categories based on their culpability. The first category involved the architects of an offence e.g., those who financed the killing, the second category involves offenders who ensnared the deceased into his death, the third category is the henchmen, those who carried out the brutal killing and the fourth category involves offenders involved in the cover up of the offence by attempting to silence witnesses. The Judge sentenced the third category with the highest term of imprisonment and graduated the term down for the other categories.
- iv. That the offender was provoked.
- v. That the offender acted to any extent in self-defence or in fear of violence.
- vi. The age of the offender.”

7. I have considered the circumstances under which the murder most foul was committed by the convict stabbing his step brother and the reason was because the convict and his mother were against the elders allowing the deceased to build a house on the portion of land allocated to the deceased by his late father who had also died and buried a few weeks earlier.
8. From the evidence on record, the convict and his mother had sworn to eliminate the deceased should he built a house on the land. The deceased faced those threats and hostility from the convict and his mother which were actualised when he was attacked by the convict and stabbed in the abdomen with a knife which was curved, an indication that the knife was customised for that purpose. The court does not buy the narrative from the convict that he never intended to kill his brother.
9. This was a planned murder even from the statement by the convict’s mother to the Police which was produced as an exhibit, that the convict is the one who went to where the deceased was allegedly cutting trees planted by her husband. There is no evidence that the deceased ever armed himself to attack the convict. The idea of the two fighting was to bring in the aspect of affray and self defence which this



- court could not buy because whatever injuries the convict sustained, from the evidence on record, could not have been occasioned by the deceased, even in self-defence.
10. There was absolutely no provocation on the [part of the deceased. The so-called trees which the deceased allegedly cut were not property of the convict. The land too belonged to their late father and there was no evidence of the deceased invading the convict.
 11. If the convict felt that the deceased was trespassing on his land, nothing prevented him from reporting the deceased to the law enforcement agencies for action. Instead, he took the law in his own hands and with the intention of eliminating the deceased as earlier threatened. The deceased already had a house on the land and if he was a trespasser, which he was not, from the evidence on record, why did the convict not demolish that house instead of killing him?
 12. The murder depicted in this case is that similar to the biblical Cain who killed his brother Abel. The difference being that the convict herein claims to have been acting in self defence which was never the case unlike Cain who told God when asked as to where his brother Abel was, and he responded that he was not his brother's keeper.
 13. From the evidence on record, the deceased lived under threats from the convict and his mother, all from hell simply who hated the deceased with passion because the deceased was not her blood son. The deceased never chose to be born of a different mother who died and left him a toddler necessitating him to be raised by his maternal uncles who are now left supporting his widows and children. He was 47 years according to his widow. The convict claims to be 36 years old yet his medical documents produced as exhibits say that he was 44 years at the time he murdered the deceased. He is obviously a liar. He hated his brother with a passion and any exempt to ask for forgiveness from the widow of the deceased is paying lip service because freedom is sweet. No criminal ever wishes to lose their freedom. They always hope to get away with crime.
 14. This is not a case where the court can impose a non-custodial sentence as the circumstances do not warrant exercise of that kind of discretion as it would amount to a slap on the cheek. The deceased's children and widows have been left destitute. The land which the convict wanted to hoard to himself and his mother has remained unoccupied and because of greed, no one may ever occupy it because the innocent blood of Peter Caleb Bwana cries out to God to avenge his brutal painful murder.
 15. Under section 204 of the *Penal Code*, punishment for murder upon conviction is death. However, the discretion of this court in sentencing is inherent following the Francis Muruatetu case. The convict must be kept away from the society so that those harbouring intentions like his to kill their kin in order to inherit property of their deceased parents may learn lessons. The convict has children yes, but so does the deceased, who was orphaned and has left his children very young destitute. The convict's children have their mother and his mother who has alternative means of feeding for them. In her statement to the police, she stated that the convict was her only child with one other adopted. She stated that she had rental houses. Let her care for her legitimate grandchildren. She denied knowing the deceased, in her defence for her murderous son whose actions she supported so that the land could remain all theirs. She expected to reap from the greed of her son.
 16. I exercise discretion and sentence the convict Samuel Ogola Olang'o to serve forty (40) years imprisonment. The sentence will be calculated taking into account the period served in custody from the date of arrest to the date he was released on bond and from 31/1/2025 when the bond was suspended until today.
 17. His surety is hereby discharged and the security to be released upon proper identification.



18. The right of appeal to the Court of Appeal is guaranteed within 14 days of today and is explained to the convict. Proceedings are already typed. He can seek for certification together with the judgment and this sentence ruling to be supplied upon payment of the requisite court fees.
19. This file is closed.
20. I so order.

**DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY VIA MICROSOFT TEAMS
THIS 6TH DAY OF FEBRUARY, 2025**

R.E. ABURILI

JUDGE

