



REPUBLIC OF KENYA



**Republic v Omolo alias Khai & another (Criminal Case E001 of 2021)  
[2025] KEHC 2039 (KLR) (6 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 2039 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL CASE E001 OF 2021  
RE ABURILI, J  
FEBRUARY 6, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**AYUB OGADA OMOLO ALIAS KHAI ..... 1<sup>ST</sup> ACCUSED**

**AYUB OGADA OYIER ALIAS GENGE ..... 2<sup>ND</sup> ACCUSED**

**SENTENCE**

1. On 3<sup>rd</sup> February, 2025, the two accused persons, Ayub Ogada Omolo alias 'Khai' and Amos Ogada Oyier alias 'Genge' were jointly convicted of the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*, as per the Information for murder dated 14<sup>th</sup> of January 2021.
2. The two accused persons have now mitigated and the court is now called upon to mete out the appropriate sentence in accordance with the law.
3. In their mitigations, the 1<sup>st</sup> accused through his counsel Mr. Kuria pleaded for leniency. He is a family man of two wives and four children, three of those children are said to be minors in school and that the accused is their sole breadwinner hence his incarceration will have serious consequences on the dependants who will be rendered destitute.
4. Mr. Kuria urged this Court to be guided by the principles of sentencing set out in the *Francis Karioko Muruatetu and another v Republic* [2017] eKLR on the unconstitutionality of the mandatory death sentence under section 204 of the *Penal Code*.
5. Counsel submitted that the 1<sup>st</sup> accused was deeply remorseful for his actions and that he had demonstrated willingness to reform. He prayed for non-custodial sentence.
6. On behalf of the 2<sup>nd</sup> accused person, Mr. Abande advocate submitted in mitigation urging this court to take into account the mental status of the 2<sup>nd</sup> accused person at the time of commission of the offence



- as there was a question on his mental capabilities. Secondly, that the 2<sup>nd</sup> accused person was remorseful which remorse came out in his defence.
7. That he was a first offender hence the court should consider circumstances under which the offence was committed and mete out lenient sentence, adding that the accused has a good relationship with his neighbours and that he undertakes to follow a reform journey supported by his family. He also prayed for non-custodial sentence to enable him reform and continue with medical care since his mental status was in question at the time that the offence was committed.
  8. In their own words, the accused were given the opportunity to mitigate.
  9. The 1<sup>st</sup> accused Ayub Ogada Omolo thanked this court for expediting his case and prayed for leniency. He stated that he did not know what happened and why it happened and that he did not know if he was framed. He prayed for the court's mercy. He was aged 50 years old.
  10. The 2<sup>nd</sup> accused Amos Ogada Oyier mitigated thanking the court for treating him well and that this was his first offence. He submitted himself and his fate to the authority of the court. That he was 46 years old and was married with five children and a small-scale farmer.
  11. The prosecution had no previous criminal records on the accused persons.
  12. I have considered the mitigations above and the fact that the accused are first offenders. They are remorseful and seek for leniency. The 2<sup>nd</sup> accused seeks for leniency stating that his mental status at the time was in question so that he can continue with medication. However, there is no evidence that he was undergoing any medication in mental health. It is true that when he was first examined by a psychiatrist, he was found unfit to stand trial. However, shortly thereafter, he was reexamined and found to be mentally fit. There is no history of him suffering from any mental illness which may have impaired him during the time of commission of the offence. From the pre-bail assessment report filed in court on 22<sup>nd</sup> April 2022, the 2<sup>nd</sup> accused was a casual labourer within the village especially sand harvesting. The mental assessment report of the same date also cleared him of any mental illness. The earlier report dated 20<sup>th</sup> January 2021 showed that he was labouring under a psychiatric/ mental condition, necessitating a second mental assessment report which showed the opposite.
  13. My conclusion therefore is that there is no evidence that as at the time that the offence was committed, the accused was mentally unsound and there was no evidence that he was undergoing any treatment. In fact, the court record shows that he was never taken for treatment and on 12/5/2021, Ochieng J directed that he undergoes a second mental assessment to verify whether there was still need to send him for appropriate treatment and after he was examined, he was found fit to stand trial.
  14. I have therefore considered the circumstances under which the offence was committed, the principles guiding sentencing in murder cases as espoused in the *Francis Muruatetu* case and the Revised Sentencing Guidelines approved by the National Council on Administration of Justice, 2023.
  15. I have taken into account the objects and purposes of sentencing and the fact that no amount of punishment can revive a dead person. However, life is sacrosanct and no person has any right to take away the life of another, except as provided for in law and under the *Constitution*.
  16. In this case, there is absolutely no reason for the cruel murder of the deceased although motive is immaterial. The deceased suffered very serious injuries as shown by the post mortem report, comprising multiple fractures and cuts all over his body which was dragged from the home of the 1<sup>st</sup> accused to the incomplete house of the 2<sup>nd</sup> accused where it was partially buried and left to rot beyond recognition. Only the DNA of his son was used to identify the deceased whose body had decomposed. From the



postmortem report, the deceased's external genitalia were missing, reminiscent of some kind of ritual killing, leaving only the skeletal part of the deceased which was recovered.

17. From the injuries suffered by the deceased, no doubt, deceased underwent mental or physical suffering inflicted upon the victim before death. The weapon used was sharp and there was evidence of torture or inhuman or degrading treatment prior to death, which is relevant in sentencing.
18. There was no evidence of provocation by the deceased to warrant such dehumanizing death.
19. The guidelines on sentencing in murder cases provide as follows at pages 66 and 67 of the 2023 [Sentencing Guidelines](#):

“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. [emphasis added]

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.”[emphasis added]

- 20. The accused persons are aged between 46 and 50 years old. There are aggravating circumstances which outweigh any mitigating circumstances, considering how the deceased was tortured and killed and buried in a shallow grave in a house which was incomplete.
- 21. Only the two accused persons herein know why they unlawfully killed the deceased and with malice aforethought and in a ritualistic manner.
- 22. In the circumstances, and applying the above guidelines in sentencing, I hereby exercise discretion and sentence each of the two accused persons herein Ayub Ogada Omolo alias Khan and Amos Ogada Oyier alias Genge to each serve twenty (20) years imprisonment to be calculated taking into account the number of days they spent in custody prior to being released on bail pending trial which, according to the court proceedings, from 1/1/2021 when the accused were arrested to 20/8/2021 on the part



of the 1<sup>st</sup> accused person while for the 2<sup>nd</sup> accused person, from 1/1/2021 to 26/7/2022 when he was released on bond. The sentence shall also take into account the dates when the accused were returned to prison after conviction on 3/2/2025 to 6/2/2025 both days inclusive.

23. Right of appeal is 14 days of today to the Court of Appeal guaranteed and explained.
24. The sureties are discharged and their securities to be released on proper identification.
25. Mr. Kuria and Mr. Abande Advocates were privately instructed by the accused persons hence no pauper briefs fees are payable.
26. This file is closed.

**DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY VIA MICROSOFT TEAMS  
THIS 6<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**R.E. ABURILI**

**JUDGE**

