



**Republic v Otieno (Criminal Case (Murder)) E004 of 2023)
[2025] KEHC 2412 (KLR) (7 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 2412 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL CASE (MURDER) E004 OF 2023**

DK KEMEL, J

MARCH 7, 2025

BETWEEN

REPUBLIC PROSECUTION

AND

MARTIN OMONDI OTIENO ACCUSED

SENTENCE

1. The accused herein Martin Omondi Otieno has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Vide the judgment of this court dated 7th February, 2025, the accused was found guilty and convicted accordingly.
2. Sentencing hearing took place on 18/2/2024. Mr. Ooro E., learned counsel for the defence submitted inter alia; that the accused is a young person, extremely remorseful and regrets the incident and the death of the deceased whom he knew well; that the accused was caught up in the heat of the moment; that the accused himself submitted that he had been intoxicated and that he had no intention of killing the deceased. That he prays for leniency and that the court does consider granting him a non-custodial sentence.
3. Mr. Soita, learned counsel for the prosecution, submitted inter alia; that indeed a life was lost; that this court balances the scales of justice in that the victim’s family should feel that justice is served and that an appropriate sentence be imposed upon the accused.
4. This court called for a pre-sentence report by the probation department. The same is dated 17th January, 2025. The same indicates inter alia; that the accused comes from a humble upbringing; that he is the fifth born in a family of eight siblings; that he did not manage to complete his primary education due to financial constraints; that he has been undertaking casual jobs within the community; that he is single with no child; that he abuses drugs and substances- chang’aa and bhang; that he is chaotic and quarrelsome when under the influence of these substances; that accused is a Christian; that prior to



the incident, he had been suspected to be involved in other incidences of theft and was once charged though the case was later withdrawn.

The report further indicated inter alia; that the offender claims that on that fateful day, he had done a full day's job for a community member who sells illicit brew; that he used his pay of Ksh1000/= to indulge in some alcohol at her place later that evening; that the deceased was also at the joint ; that he together with the deceased drunk alcohol; that they later left together and headed to their different homes; that quarrels ensued on their way and that they ended up fighting; that the deceased ran to a nearby home while accused proceeded to his home; that the following day, angry villagers went to his home and set it on fire; that the accused had prior to the incident stolen the deceased's bed; that there exists hostility between the two families; that the two families have not interacted since the incident; that tension is still high; that no reconciliation efforts have been put in place.

It is further submitted that; the offender is not remorseful; the accused has refused to own up his mistakes; that offender is still bitter with victim's family whom he blames for torching his homestead; that the accused is not sincere; that deceased was forty six years, husband and a father of two children; that the deceased was a jovial man who was loved by many; that the offender is known in the village as a thief; that the offender through his parents has threatened to burn the entire village of Udonga in case he is released.

In conclusion, the probation officer indicated inter alia; that the offender is a young man with no previous convictions; that offender has a bad record in the community; that he pleaded not guilty and does not take responsibility; that the accused is unremorseful though he prays for forgiveness; that the accused has been living alone in the homestead of his parents; that his homestead consisting of five houses were torched and that only his father has managed to build a simple structure for his family; that the accused lost all of his belongings as a result of the conduct of the irate villagers; that the offender has a bad reputation in the society and does not benefit from any recommendation for a non-custodial sentence; that he is beyond community rehabilitation and urged the court to prefer an appropriate sentence.

5. I have considered the mitigating submissions by both learned counsels for the parties herein. 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 v R* (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 courts could as well impose a sentence of death if the circumstances warrant it.
6. From the post mortem report produced by Dr. Eric Okongo (PW6) a medical officer at Siaya County General Referral Hospital as exhibit 1, it shows that the body of the deceased had tense abdominal wall, bruise on the right shoulder and back, there was perforation of the large gut with pieces of intestinal soiled with stool. He formed the opinion that the cause of death was perforated gut secondary to blunt force trauma and worms.
7. 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.”



8. It is noted that the accused herein remained in custody throughout the trial. Any period spent in custody will be considered during the sentencing in line with the provisions of section 333(2) of the Criminal Procedure Code.
9. I find the circumstances of the case and the pre-sentence report indicate that the deceased died a very painful death and that the circumstances warrant a custodial rehabilitation for the accused. The pre-sentence report indicates that the accused is not suitable for a non-custodial sentence as the situation on the ground is still hostile and that his safety is not guaranteed since his homestead was razed to the ground in the aftermath of the incident as a show of public anger. The circumstances under which the deceased died are tragic in that the accused herein injured deceased's kidneys through beating by use of a jembe (hoe) stick and that the injuries inflicted were so severe that he did not have a chance of any survival as he died. It transpired that the deceased had suspected the accused herein to have stolen the deceased's bed and that brewed anger on the part of the accused to plan to kill the deceased. Had the accused resorted to other channels of redress in resolving his differences with the deceased, he could be alive today. The probation officer was of the view that supervised non-custodial rehabilitation is not suitable in the circumstances. It transpired that the accused is a habitual thief in the area and that the villagers had got tired of his thieving ways. I find that the custodial rehabilitation will benefit the accused herein before he can be allowed to rejoin the community. The custodial rehabilitation will help to mould him to be a better person before being released back to the society.
10. In the result, I order the accused herein Martin Omondi Otieno to serve a sentence of twenty (20) years' imprisonment which shall commence from the date of arrest namely 10/2/2023.

DATED AND DELIVERED AT SIAYA THIS 7TH DAY OF MARCH, 2025.

D. KEMEI

JUDGE

In the presence of:

Martin Omondi Otieno..... Accused

Ooro E.....for Accused

Mocha.....for Prosecution

Ogendo.....Court Assistant

