



**Director of Public Prosecution v Ommolo (Criminal Case  
12 of 2019) [2025] KEHC 7896 (KLR) (3 June 2025) (Sentence)**

Neutral citation: [2025] KEHC 7896 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 12 OF 2019**

**S MBUNGI, J**

**JUNE 3, 2025**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTION ..... REPUBLIC**

**AND**

**BONFACE OKETCH OMMOLO ..... ACCUSED**

**SENTENCE**

1. The accused person was charged was initially charged with two counts of murder contrary to section 203 as read with Section 204 of the penal code.
2. The particulars of the 1<sup>st</sup> count were that on the night of 31.01.2019 and 01.02.2019 at Ituti village, Eshirombe location, Khwisero subcounty within Kakamega County jointly with others not before court, the accused murdered one Meleti Owade Ooko.
3. The particulars of the 2<sup>nd</sup> count were that on the night of 31.01.2019 and 01.02.2019 at Ituti village, Eshirombe location, Khwisero subcounty within Kakamega County jointly with others not before court, the accused murdered one Paul Odera Wachui.
4. This court in its judgment dated 28<sup>th</sup> November,2024 analyzed the prosecution and the defence evidence and witnesses found that the accused person was guilty of the offence of murder on the 1<sup>st</sup> count, and acquitted him on the 2<sup>nd</sup> count under section 215 of the *Criminal Procedure Code*.
5. The prosecution case was extensively heard by Justice W. Musyoka, the defence case was heard by Justice S. Chirchir, I heard the mitigation, I have carefully gone through the record I am fully sized with the facts of the case therefore well grounded to met the sentence I am about to.
6. Section 204 of the *Penal Code* provides that a person convicted of murder shall be sentenced to death however the mandatory nature of the death penalty has been outlawed by the Supreme Court in the case of Francis Muruatetu & Another V Republic [2017] eKLR in which the Court while retaining



the death sentence found that its mandatory nature was unconstitutional and for this sentence had this to say: -

- “45. To our minds, what Section 204 of the *Penal Code* is essentially saying to a convict is that he or she cannot be heard on why, in all the circumstances of his/her case. The death sentence should not be imposed on him or her, or that even if he or she is heard, it is only for the purposes of the record as at that time of mitigation because the court has to impose the death sentence nonetheless, as illustrated by the foregoing Court of Appeal decision. Try as we might, we cannot decipher the possible rationale for this provision. We think that a person facing the death sentence is most deserving to be heard in mitigation because of the finality of the sentence.
46. We are of the view that mitigation is an important, congruent element of a fair trial. The fact that mitigation is not expressly mentioned as a right in *the constitution* does not deprive it of the necessity and essence in the fair trial process. In any case, the right pertaining to fair trial of an accused pursuant to Article 50 (2) of *the Constitution* are not exhaustive.”

The court therefore proceeded to pronounce itself thus:

- “58. We now lay to rest the quagmire that has plagued the court with regard to the mandatory nature of Section 204 of the *Penal Code*. We do this by determining that any court dealing with the offence of murder is allowed to exercise judicial discretion by considering any mitigating factors in sentencing an accused person charged with and found guilty of that offence. To do otherwise will render a trial, with the resulting sentence under Section 204 of the *Penal Code*, unfair, thereby conflicting with article 25(c), 28, 48 and 50(1) and (2) (g) of *the Constitution*.”
7. In his mitigation, the accused prayed for leniency, submitting that he had been in custody since 2019, he was remorseful and had learnt to control his urges.
8. On the other hand, the prosecution submitted that the accused person’s mitigation factors were misplaced since the charge had not been reduced to manslaughter. He submitted that the accused person had been found guilty of the offence of murder and prayed that he faces the full force of the law to show that life is precious.
9. A pre-sentence report dated 03.02.2025 was presented to the court. According to the report, the accused is known to be uncontrollable when intoxicated with alcohol, often raising conflicts with his neighbors, making threats and acting impulsively. He still maintains his innocence, stating that he was attacked first and screamed for help during the incident. According to the community and local administration, the accused was a petty thief, too. However, the cases were withdrawn after compensation.
10. I have considered the social inquiry report, the accused’s mitigation and also submissions by the state.
11. Under the Judiciary sentencing Policy guidelines, the objectives of sentencing are: -
1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
  2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.



3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.
  4. Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
  5. Community Protection: to protect the community by incapacitating the offender.
  6. Denunciation: To communicate the community's condemnation of the criminal conduct.
12. The Supreme Court in Francis Karioko Muruatetu & Another vs Republic, Petition No. 15 of 2015, as a guide in sentencing held that:
- “...the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:
- a. age of the offender
  - b. being a first offender;
  - c. whether the offender pleaded guilty;
  - d. character and record of the offender;
  - e. commission of the offence in response to gender-based violence;
  - f. remorsefulness of the offender;
  - g. the possibility of reform and social re-adaptation of the offender;
  - h. any other factor that the Court considers relevant.”
13. In considering the appropriate sentence in this case, this court must carefully weigh both aggravating and mitigating factors. The court must balance the accused's personal circumstances, society's interests, and the nature of the crime including the circumstances of its commission. The accused's conviction rests primarily on circumstantial evidence linking the accused to the 1<sup>st</sup> deceased's death, with the discovery of the deceased's body on the fence at the accused's residence. The medical evidence from the post mortem report reveals that the deceased did not only suffer from severe cuts around the neck area which severed blood vessels, but his skull was also opened up and brain removed.
14. I also note that the accused has been in custody all through the trial and is a first-time offender with a possibility of reforming and being rehabilitated.
15. The offence of murder carries the death penalty; however, considering both the gravity of the offence and the need to protect society, while still leaving room for the accused person's rehabilitation, I hereby sentence the Accused to thirty (30) years in prison.
16. In compliance with Section 333(2) of the *Criminal Procedure Code*, the sentence will start from 01.02.2019 when the Accused was arrested and placed in custody.
17. Right of appeal 14 days explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 3<sup>RD</sup> DAY OF JUNE, 2025**



**S.N MBUNGI**

**JUDGE**

In the presence of :

Accused- Present.

Court Assistant – Elizabeth Angong'a

Court Prosecutor- Ms. Osoro

