



REPUBLIC OF KENYA



**Republic v Oduor (Criminal Case E039 of 2023)
[2025] KEHC 8401 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8401 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E039 OF 2023**

**DK KEMEL, J
JUNE 17, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

KEVIN ODUOR ACCUSED

RULING

1. The accused herein Kevin Oduor 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 4th April, 2025, the accused was found guilty and convicted accordingly.
2. Sentencing hearing took place on 23/5/2025. Mr. Odhiambo, learned counsel for defence submitted inter alia; that the accused has no previous convictions; that he is a father of three children who are still in lower primary school; that he is unwell as he was assaulted during the incident; that a non-custodial sentence is preferable; that the pre-sentence report indicates that the local administration has a good view of the accused as a productive member of the society who has a tree seedling business which he can fall back on if released; that his family is ready to accept him back; that he is remorseful; that a non-custodial sentence be imposed.
3. Mr. Soita learned counsel for the prosecution submitted inter alia; that the accused murdered an old lady who was his landlord; that the court should balance the scales of justice for the society; that custodial sentence be imposed.
4. The court called for a pre-sentence report by the Probation department. The report is dated 17/4/2025. The same indicates inter alia; that the offender still denies committing the offence despite the court's guilty verdict; that the family of the victim are still bitter by the death of their kin who was ninety five (95) years old and that they are fearful since their lives would be in danger should the offender choose to revenge if released; that the community confirms that the accused is gentle and calm



and not a violent individual and productive member of the community and that they do not see him as a threat; that the accused is an alcoholic; that the probation department recommends that he be placed to serve under probation.

5. I have considered the mitigating submissions by both learned counsels for the parties herein. 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 Vs 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 dated 9/11/2024 produced by Dr. Victor Ochieng (PW4) who testified on behalf of Dr Bruno Okal stated that the body of the deceased had multiple cut wounds on the parietal region of the head and jugular region and that the jugular vein was ruptured. That there was a cerebral fracture on the head. That the cause of death was multiple organ failure secondary to severe brain injury secondary to deep cut wounds on the head coupled with hemorrhagic shock. That specimens were collected for DNA analysis.
7. The circumstances under which the deceased died are rather tragic. The deceased who was then aged ninety five (95) years was peacefully going about her daily chores when her life was abruptly cut short thanks to the accused herein who was not amused by the deceased's complaint that she had not been consulted regarding the accused's conduct in proceeding to dig a pit latrine without her consent and knowledge. That disagreement alone did not warrant the accused to eliminate the deceased. It seems the accused is a person of an ungovernable anger because he just killed the old woman without any reason whatsoever. If anything, the accused if aggrieved by the deceased's conduct in objecting the digging of the pit latrine, would have resorted to other methods of redress such as engaging the deceased's children or even the clan elder. The deceased thus died a painful death. She did not deserve to die in the manner she did.
8. As regards the sentence to be imposed, the Court of Appeal in the case of Charo Ngumbao Gugudu Vs. 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 Vs. R* (1990) eKLR.”
9. It is noted from the pre-sentence report that the probation officer has proposed that the accused be placed under probation so as to enable him handle his tree seedling business. It is instructive that the accused brutally killed a defenseless octogenarian aged 95 years and threw her body into a pit within her rental plot. The accused, with an ungovernable anger should not have gone to that extreme even after being quarreled and reprimanded by the deceased. It is instructive that the accused still continues to deny the offence and thus the claim that he is remorseful while still denying the charge must be treated with a pinch of salt. I find that a custodial rehabilitation is necessary in the circumstances so as to enable the accused to undergo comprehensive rehabilitation before being released back to rejoin his family. The custodial rehabilitation will help to mould him into a better individual before being allowed to rejoin the society.
10. It is noted that the accused did not manage to post bail and thus remained in custody throughout the trial. Hence, the said period must be factored in line with the provisions of section 333(2) of the



Criminal Procedure Code. The sentence to be imposed shall commence from the date of arrest namely 2/11/2023.

11. In view of the foregoing observations, the accused herein Kevin Oduor is ordered to serve twenty (20) years' imprisonment which shall commence from the date of arrest namely 2/11/2023.

Orders accordingly.

DATED AND DELIVERED AT SIAYA THIS 17TH DAY OF JUNE 2025.

D.KEMEI

JUDGE

In the presence of :

Kevin Oduor.....Accused

Odhiambo.....for Accused

M/s Kerubo.....for Prosecution

Okumu.....Court Assistant

