



**State v Wayumba (Criminal Case 10 of 2019)
[2024] KEHC 453 (KLR) (23 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 453 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE 10 OF 2019
RE ABURILI, J
JANUARY 23, 2024**

BETWEEN

STATE PROSECUTION

AND

COLLINS OWUOR HONGO WAYUMBA ACCUSED

SENTENCE

1. On November 22, 2023, this court delivered Judgment with a finding of Guilty against the accused person herein Collins Owuor Hongo Wayumba for the murder of Enos Oganda Odongo.
2. The accused person and his advocate Mr. Abande, mitigated after the prosecution stated that they had no past criminal records on the accused/convict who could be treated as a first offender.
3. In mitigation, it was submitted that the accused did not know that he was going to meet the deceased. That he did not plan and is a young person, a career electrician. He is a first offender and is very remorseful for the incident. He was a village mate of the deceased and their families coexisted with no bad blood. That the court should consider his age, records, remorse and future relationship and rehabilitation and impose lenient sentence which gives justice to all parties.
4. The accused in his own words mitigated saying he regretted the accident and that he did not intend. He prayed for leniency saying he was still young with a life ahead.
5. The deceased's widow Mrs. Penina Ogada took oath and gave a victim's impact statement saying she has suffered since the demise of her husband who was their sole breadwinner. That the clan and neighbours now despise her since the death of her husband and she has one child who is still in school. She urged for justice and that let the accused be jailed.
6. The court then called for a presentence report which has now been availed to court and to the parties.



7. Mr. Abande counsel for the accused accepted contents of the report which is favourable to the accused while conceding that the court is not bound by it but is factual on what happened, which was a normal road traffic accident.
8. The prosecution led by Mr. Okango Senior Principal Prosecution Counsel submitted that the report should be read alongside the evidence adduced by witnesses bearing in mind the fact that this was a murder case and not an ordinary road traffic accident.
9. I have considered the mitigation and the Presentence Report as well as the Victim Impact Statement by the widow.
10. I have also considered the circumstances under which the murder most foul was committed and which the convict herein denied ever knocking down the deceased even in the glare of the postmortem report on the multiple injuries sustained by the deceased.
11. Indeed, the accused, from his mitigation and presentence report now appears to admit that he knocked the deceased but that it was an accident, a fact which he vehemently denied throughout the proceedings and the trial.
12. Nonetheless, the manner of knocking down the deceased in what the public opinion now is that it was at a black corner, and that it was a traffic accident, is what the public have no idea of because they did not witness that so called 'accident' which led to loss of a precious life. PW 1 was with the deceased. It was in daylight at 3.00pm. He saw what the accused did. He had no reason to lie to court or frame the accused. His evidence on how the accused went backwards (reversed), went forward and crushed the deceased who fell on his back then the accused ran over the deceased severally on the left side of the chest and when PW 1 tried to intervene, the accused turned the Motorcycle around in an attempt to hit PW1 as well which prompted PW 1 to escape for his life, was corroborated by the postmortem Report which showed that the deceased, according to Dr. Oyaya PW 7, suffered multiple injuries on the chest, knee and upper side of the abdomen with ruptured spleen, clotted blood in the abdomen and multiple bowel perforations.
13. A motorcycle is a narrow instrument unlike if it was a motor vehicle. The evidence of malice aforethought was therefore glaring as the accused ran over the deceased severally.
14. Having said that, the accused is a first offender and is a young person aged only 26 years. He is not married hence he has no responsibilities to third parties as per the Presentence Report dated January 18, 2024. He is remorseful and prays for leniency. He has good societal ties of a supportive family and the community at large. The deceased's family lost their breadwinner. An innocent valuable life was lost.
15. Punishment for murder is death, under section 204 of the *Penal Code*.
16. However, in view of the decision by the Supreme Court of Kenya in *Francis Karioko Muruatetu & another vs Republic* (2017) eKLR, this court has discretion in sentencing having regard to the circumstances of each case and mitigations.
17. Having considered all the above and the objects and purposes of sentencing as espoused in the Judiciary Sentencing Policy Guidelines, I hereby exercise discretion and sentence the accused person herein Collins Owuor Hongo Wayumba to serve twenty (20) years imprisonment which shall be calculated taking into account the number of days that he was held in custody before he was released on bond pending trial on May 24, 2019 and upon conviction on November 22, 2023 pending a Presentencing Report herein which is today.



18. Right of Appeal 14 days. Proceedings to be typed in full and supplied upon payment of the requisite court fees.

19. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 23RD DAY OF JANUARY, 2024

R.E. ABURILI

JUDGE

