



**Republic v Ongalo (Criminal Case 13 of 2019)
[2024] KEHC 2492 (KLR) (8 March 2024) (Sentence)**

Neutral citation: [2024] KEHC 2492 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL CASE 13 OF 2019**

**A. ONG'INJO, J
MARCH 8, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

BRIAN OTIENO ONGALO ACCUSED

SENTENCE

1. The accused person Brian Otieno was charged with the offence of murder contrary to Section 203 as read 204 of the [penal code](#).
2. This court subsequently called for Victim Impact Statement which was filed and dated 26th February 2024 written by Principal Probation Officer Mr. Wycliffe M. Wathome.
3. Mr. Ganzala Advocate for the accused mitigated on behalf of the accused person and that he should be pardoned as he was a father of 2 children aged 2 and 7 years respectively and that he was their sole breadwinner as well as the breadwinner of his 6 siblings whom he left when their parents died.
4. Mr. Ganzala said the accused was a first offender and that the offence was not deliberate. That it was committed on the heat of passion. He said the accused was remorseful and pleaded for mercy and leniency of the court. He hoped that there will be a day for conciliation between him and the family of the deceased.
5. In the Victim Impact Statement, the Probation Officer established that following the death of the deceased, his parents particularly the mother went through a lot of anguish and was yet to come to terms with the incident. The deceased also had one child and following the death, the child and its mother had to relocate to Nakuru where the deceased's father supports them where he can.
6. The secondary victims are indicated to be aware of the current health status and family challenges of the accused and do sympathise with him. It is also indicated that the accused would have liked to



engage the secondary victim for a verbal apology but he had been in custody throughout and he suffered stroke which has hampered not only his mobility but also his cognitive ability to facilitate a meaningful engagement between the parties.

7. It was concluded in the statement that both parties agree that life was lost and conciliation was desirable. That in consideration of the accused person's medical condition, he seeks leniency during sentencing.
8. This court has considered the Victim Impact Statement, the accused person's mitigation and the circumstances under which the offence was committed by the accused person and find that the accused deprived the deceased of sacrosanct life contrary to Article 26 (1) and (3) of *the Constitution* of Kenya and left his dependants particularly the mother and the child traumatized psychologically without economic support which he was according them from his work at the food café in Shauri Yako Village in Nyalii.
9. The offence committed was serious and requires a deterrent sentence that is proportional to the to the offence committed. However, in consideration of the accused person's medical condition, this court sentences him to serve 10 years jail term to run from 18th day July 2019 when he was 1st arraigned in court as he did not secure release on bond from remand. This is pursuant to Section 333(2) of the *Criminal Procedure Code*. Right of appeal 14 days explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 8TH DAY OF MARCH 2024.**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Etropia- Court Assistant

Mr. Ngiri for the State

Mr. Ganzala Advocate for the Accused

Accused present in person

HON. LADY JUSTICE A. ONG'INJO

JUDGE

Mr. Ganzala Advocate: We pray for a copy of the judgment to be supplied to us.

Order: Copies of proceedings, judgment and sentence to be supplied to defence and state.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

8.3.2024

