



**Republic v James (Criminal Case E007 of 2023)
[2024] KEHC 3745 (KLR) (16 April 2024) (Sentence)**

Neutral citation: [2024] KEHC 3745 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E007 OF 2023
RE ABURILI, J
APRIL 16, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

KELLY OTIENO JAMES ALIAS OLOO ACCUSED

SENTENCE

1. On 3rd April 2024, this court delivered judgment in this matter wherein it found the accused herein Kelly Otieno James, Guilty of the murder of Dan Otieno Ouma and convicted the accused accordingly. The court then rescheduled the pronouncement of sentence until after mitigation and called for a presentence report and victim impact statements.
2. I have heard the mitigation by the accused and his counsel. The accused is a first offender. He prays for leniency. He does not admit the offence but appreciates the pain of losing a loved one. He regrets that a life was lost in the circumstances that he did not anticipate as he only intervened to save a life.
3. He prays for term sentence as he has a family that depends on him and that his family was displaced following this incident.
4. The accused and the deceased's family are neighbours and clansmen. He condoles with the family of the deceased. He is 33 years old according to the presentence report dated 16th April 2023 filed by William O. Otieno. He is a first offender. While on bond, he did not abscond.
5. The court has also heard from the parents of the deceased who pray for justice for their son. Their main concern is that the mother to the accused has kept threatening them that she will do something to them that will never be forgotten. The threats should however be reported to the police for action.
6. The accused has not threatened the family of the deceased and from the presentence report, he is known to be a quiet and humble person who was only obsessed with his work of rearing hybrid dogs.



7. Although he denies committing the offence, he appears to be remorseful from his demeanor and conduct in court throughout the trial and in his mitigation. His family and that of the deceased being neighbours continue to co-exist.
8. This court also cognizant of the fact that the deceased died in circumstances which showed that he was a very violent person who viciously assaulted one of the witnesses in this case and that he met his death following the intervention by neighbours who went to the rescue of the victim of his assault.
9. However, an eye for an eye is not part of our legal system. A suspected offender has to be arrested and surrendered to the law enforcement agencies to face justice just like the convict here had to face justice for being involved in the unlawful killing of the deceased.
10. Other persons who were involved went at large. Justice is both ways. No person has any right whatsoever to take away the life of another.
11. Taking into account all the above and circumstances under which the deceased Dan Otieno Ouma lost his life, I hereby exercise discretion and sentence the convict herein Kelly Otieno James alias Oloo to serve Fifteen (15) years imprisonment taking into account the period he spent in custody from date of arrest on 16th February 2023 until 29th May 2023 when he deposited cash bail of Kshs.100,000 into court and from 3rd April 2024 to 16th April 2024 today during which period, his bond was suspended upon conviction.
12. Cash bail to be refunded to the depositor thereof upon proper identification and submission to court of Bank Account details.
13. Right of Appeal to the Court of Appeal within 14 days of the date hereof.
14. This Ruling to be typed forthwith.
15. The file is closed.
16. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 16TH DAY OF APRIL, 2024

R. E. ABURILI

JUDGE

