



**Republic v Ojwang (Criminal Case 31 of 2015)
[2024] KEHC 7296 (KLR) (12 June 2024) (Resentence)**

Neutral citation: [2024] KEHC 7296 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE 31 OF 2015**

**RE ABURILI, J
JUNE 12, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

COLINS OTIENO OJWANG ACCUSED

RESENTENCE

1. The accused person Collins Otieno Ojwang was convicted and sentenced to death for the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#) on 31st May 2017 by E. N. Maina J.
2. He appealed to the Court of Appeal vide Court of Appel Criminal Appeal No. 121 of 2017 and in a judgment rendered on 9th February 2024, the learned Judges Kiage, F. Tuiyot and J. Ngugi JJA dismissed his appeal against conviction, upholding the High Court’s conviction of the Appellant.
3. On sentence, the Court of Appeal directed that matter to be remitted to the High Court to hear mitigation for resentencing.
4. The accused appeared on 25th May 2024 with his counsel and mitigated.
5. Mr. Onsongo counsel representing him submitted on documents filed by the accused convict praying for leniency because the accused had acquired life skills while in prison, he was 37 years old. He is from a poverty-stricken family, he is the 4th born, only his father is alive, he has been in custody since 2017, he regrets the circumstances leading to the offence which was a dispute over burial site of a relative. Harsh punishment cannot bring back life lost and prayed for custodial sentence.
6. In his own words, the convict stated how he did not like what happened and he regretted, pleading for a second chance so that he can teach others not to commit offences.



7. That he was trained as a preacher as shown by certificates in religion studies hence he is reformed and he has known God unlike before. He prayed for leniency.
8. On behalf of the state, the Prosecution counsel Mr. Marete urged the court to re-impose death sentence which is lawful and the deceased met his death when undertaking his social responsibilities and that training in prison was not enough. That the deceased left behind dependants who should be considered.
9. I have considered all the mitigation and submissions by the state prosecutor.
10. I have also considered the circumstances under which the murder most foul was committed without any provocation and the accused's defence of alibi which was dismissed by the court of appeal.
11. I have also considered the concession by the prosecution counsel on appeal, Mr. Okango that the recent jurisprudence, following the Francis Muruatetu case is that trial courts have discretion in sentencing in murder cases, upon hearing the mitigations and circumstances of each case.
12. I have considered the guidelines in resentencing as espoused in the Muruatetu case and the objects and purpose of sentencing, the fact that the convict is a first offender and the age of the accused convict and his mitigation; and period spent in custody.
13. I exercise discretion and resentence the convict herein Collins Otieno Ojwang to serve thirty five (35) years imprisonment to be calculated from date of arrest on 27th May 2015.
14. Fresh warrant of commitment to prison to issue.
15. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 12TH DAY OF JUNE, 2024

R. E. ABURILI

JUDGE

