



**Republic v Onyango (Criminal Case E007 of 2022)  
[2024] KEHC 6755 (KLR) (5 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6755 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL CASE E007 OF 2022  
RE ABURILI, J  
JUNE 5, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SIMON OTIENO ONYANGO ALIAS AMISO ..... ACCUSED**

**RULING**

1. The accused person is Simon Otieno Onyango alias Amiso. He has been convicted of the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. In his mitigation, he pleads for leniency as he has been in prison since his arrest and that he has learnt his lessons. Secondly that he was intoxicated at the material time hence he must have acted as a result of taking alcohol. He is 24 years old. He is a sand harvester. He is unmarried but supported his parents. That his father was involved in an accident. He is the elder son in his family. He pleaded for a lenient sentence in prison.
3. The prosecution submitted urging the court to impose death sentence which is lawful, having regard to the circumstances of the case.
4. I have considered all the mitigations and the submissions by the prosecution. I have considered the circumstances under which the offence was committed, leading to the demise of Phillip Kipkorir Kirong. The late 'defence' of intoxication is also considered as a mitigating factor.
5. However, from the injuries sustained by the deceased, the accused used a heavy object to hit him on the head and the reason for such vicious attack is unknown.
6. A person who is intoxicated cannot butcher another in that manner and as there was no evidence of mental impairment of the accused. I find the late defence of intoxication to be an afterthought and dismiss it.



7. Punishment for murder upon conviction is death, under Section 204 of the Penal Code. However, this is not mandatory penalty as the court retains the discretion in sentencing having regard to the circumstances of each case and the mitigation.
8. The accused is a first offender as the prosecution had no previous criminal records on him.
9. I exercise discretion and sentence the accused Simon Otieno Onyango alias Amiso to serve twenty-five (25) years in prison to be calculated from the date of arrest on 23<sup>rd</sup> February 2022.
10. Right of Appeal to the Court of Appeal is 14 days of today.
11. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 5<sup>TH</sup> DAY OF JUNE, 2024**

**R. E. ABURILI**

**JUDGE**

