



**Republic v Otieno (Criminal Case E010 of 2023)
[2024] KEHC 10073 (KLR) (7 August 2024) (Sentence)**

Neutral citation: [2024] KEHC 10073 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E010 OF 2023
RE ABURILI, J
AUGUST 7, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

MARGARET ACHIENG OTIENO ACCUSED

SENTENCE

1. Children are innocent. They know no sin. They are little angels, especially for a three-year-old. From the evidence leading to the conviction of the accused person Margaret Achieng Otieno in this case, what she did to her three-year-old boy is what can be described as filicide. Filicide is the deliberate act of a parent killing their own child. The word filicide is derived from the Latin words filius and filia and the suffix -cide, from the word caedere meaning 'to kill'. The word can refer to both the crime and perpetrator of the crime.
2. The accused Margaret Achieng Otieno is convicted of the offence of murder as charged, contrary to section 203 of the *Penal Code*. She has mitigated and the prosecution has no past criminal record on her. This Court is now tasked with the duty of pronouncing what appropriate penalty to impose on her following her conviction for what I found to be a cold blooded murder of a three-year-old child.
3. The accused in her defence admitted to unlawfully killing the child, alleging that she was suffering and that so was the child who had been in custody of her uncle.
4. From her vivid description of what transpired on that material day, she went and collected the child from her uncle's place, after her uncle called her to return from Nairobi and take care of her child. She took the child to her boyfriend's house, first prepared and gave the child tea mixed with paraffin expecting him to die, he did not die. She strangled him but that he refused to die so she took him to the quarry nearby and full of water and threw him there and pretended to those who met her on her way out of the quarry zone that some bad person had thrown their child into the quarry.



5. The convict was methodological in the manner that she killed her child. Upon being examined by a psychiatrist before she embarked on the trial, she was found to be fit to plead and to stand trial. The accused should have surrendered the child to a children's home or to a police station, or even left him on a road for someone to pick him up. There are many children who are abandoned and who live to be great people. Additionally, capacity to take care of one child is relative. Many single parents nurture their children and spur them to success. The accused's description of how she killed the victim was horrifying. It was not an accidental death. It was deliberate.
6. According to Resnick PJ,¹ Child murder by parents (felicide) is one of the most upsetting types of crime. It is even more distressing when a mother kills her child than when a father does, because we expect mothers to be selfless and to love and protect their children at all costs (Pagelow, 1984). Mothers are supposed to be "guided by natural feminine instincts that can infer an angelic temperament, make them clairvoyant about their children's needs, and willing to place their own desires second to those of their family" (Barnett, 2006).
7. The question is, "How can a mother commit such a crime against nature and all morality and end the life she has so recently borne and nurtured?" Save for what the accused now convict claims that her dead child comes to haunt her even in prison asking her why she killed him, and indeed all persons who are unlawfully, unjustifiably and prematurely killed should haunt their killers, for, there is no person who can claim that they deserve to live and not others, the convict herein has no history of mental illness or any insane delusions. She therefore knew what she was doing and that being the case, she must pay for her cruelty towards the innocent harmless child.
8. Punishment for murder is death under Section 204 of the *Penal Code*. That sentence is lawful and constitutional having regard to the circumstances of each case. See *Francis Karioko Muruatetu & Another v Republic* 2017]e KLR.
9. Although the accused claims that she is remorseful, that remorse is coming too late in the day as it will not revive the child who lost his life under the cruel hands of its own mother; who was expected to protect him. She must have known the consequences of her action, which action was not accidental.
10. I have considered those circumstances under which the child was unlawfully killed and the age of the convict and her mitigation that she is a first offender, aged 23 years old and remorseful, seeking for lenient sentence.
11. I exercise discretion and sentence the convict Margaret Achieng Otieno to serve thirty-five (35) years imprisonment to be calculated from the date of her arrest on 7th May 2023.
12. Warrant of commitment to prison to issue. Right of Appeal is 14 days of today to the Court of Appeal.
13. The pauper brief advocate for the accused, Mr. Oregio is hereby discharged from these proceedings.
14. This file is closed.
15. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 7TH DAY OF AUGUST, 2024

R. E. ABURILI

JUDGE

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¹ <https://pubmed.ncbi.nlm.nih.gov/?term=Resnick%20PJ%5BAuthor%5>

