



**State v Ogola & 2 others (Criminal Case E009 of 2022)  
[2023] KEHC 3040 (KLR) (3 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3040 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL CASE E009 OF 2022  
RE ABURILI, J  
APRIL 3, 2023**

**BETWEEN**

**STATE ..... PROSECUTION**

**AND**

**ALFRED ODHIAMBO OGOLA ..... 1<sup>ST</sup> ACCUSED**

**ERICK OUMA OWINO ..... 2<sup>ND</sup> ACCUSED**

**OYIEKO OTIENO OUMA ..... 3<sup>RD</sup> ACCUSED**

**RULING**

1. I have heard the mitigations by the three accused persons and their advocate Ms. Agina. I have also heard the mother of the deceased on how she feels now that her son’s killers have been found guilty of his murder and are convicted of the Murder thereof. I have also perused and considered the Prebail Assessment reports filed in this court on 16/3/2022.
2. I observe that the accused are 1<sup>st</sup> offenders. They are aged between 62 and 43 years old. They are sole breadwinners of their respective families. They plead for leniency of the court.
3. I have considered the purposes and objects of punishment as contained in the Judiciary Sentencing Policy Guidelines and the circumstances under which the offence herein was committed. An innocent life was lost.
4. The deceased who had gone for a funeral was mistaken for a cattle thief. There was no cattle allegedly stolen by the deceased who came from a different jurisdiction to bury his kin and was accosted and mistaken for an alleged cattle thief and tortured to death. The accused had no mercy and the manner they attacked and killed the deceased with crude weapons, the other victims of the attack survived narrowly. The accused persons maintained their innocence but this Court is satisfied beyond reasonable doubt that they were positively identified as being among the group that attacked and



hacked the deceased to death. The accused had no mercy on a defenceless person who has left behind a family that depended on him including his widowed mother, his own widow, widow, children and his late brother's children who all relied on him for subsistence.

5. The accused persons pray for non-custodial sentences saying that their families will suffer if they are incarcerated. However, the accused persons should have known that there are serious legal and social consequences for unlawfully killing a fellow human being who did not deserve to die at all. Their families will have to live with those serious consequences borne of the accused's desire to kill. Even if the deceased was a suspect of cattle theft which I find he was not as there was no such evidence on record, the accused persons should have arrested him and taken him to the police for action and not to take the law into their own hands as they did.
6. The punishment for the offence of murder, upon conviction, is death, as stipulated in Section 204 of the Penal Code. However, in view of the mitigations and the holding in the *Francis Muruatetu & Another v. Republic* [2017]eKLR and the circumstances under which the offence herein was convicted, in order to deter those who take the law into their own hands to punish suspected offenders who turn out to be very innocent but the discovery is made too late, I hereby exercise discretion and sentence each of the accused persons herein Alfred Odhiambo Ogola, Eric Ouma Owino and Oyieko Otieno Ouma to serve twenty five (25) years imprisonment taking into account the number of days that they spent in custody following their arrest on 25/2/2022 until their release on bond on 17/3/2022.
7. The sureties are hereby discharged and their security if any deposited into court to be released forthwith.
8. The pro bono advocate Ms. Elizabeth Agina is hereby discharged from these proceedings and her pauper brief fee be settled on submissions, accompanied by the relevant documentation.
9. Right of appeal to the Court of Appeal is 14 days of today. This file is closed.

**Dated, signed and Delivered at Siaya this 3<sup>rd</sup> Day of April, 2023**

**R.E. ABURILI**

**JUDGE**

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