



**Republic v Otieno (Criminal Case 9 of 2019) [2023] KEHC 18156 (KLR) (2 June 2023) (Sentence)**

Neutral citation: [2023] KEHC 18156 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU**

**CRIMINAL CASE 9 OF 2019**

**RE ABURILI, J**

**JUNE 2, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**SAMWEL ONYANGO OTIENO ..... ACCUSED**

**SENTENCE**

1. The accused person herein Samwel Onyango Otieno was on February 22, 2019 charged with the offence of Murder contrary to section 203 as read with section 204 of the [Penal Code](#). Particulars of the information for murder are that on the nights of 8<sup>th</sup> and February 9, 2019, at unknown time at Siany Sub-location South Nyakach Location in Nyakach Subcounty within Kisumu County, he unlawfully murdered Elsa Aluoch.
2. The accused pleaded not guilty and the prosecution called 7 witnesses who testified against him. He maintained his innocence in his unsworn testimony given on April 13, 2022.
3. In his judgment rendered on January 17, 2023, Hon. F. A. Ochieng J (as he then was) found that the prosecution had proved its case against the accused now convict, beyond reasonable doubt and convicted him accordingly for the murder of Elsa Aluoch.
4. This court has invoked the provisions of section 200(2) as read with section 201 of the [Criminal Procedure Code](#), heard submissions from the prosecution and the mitigations by the accused and his counsel Ms. Ayietta.
5. The accused is a first offender. He is 28 years old. He is remorseful. He was fending for his family prior to his arrest; he was 24 years and he has been in custody for the last 4 years from 2019; that he has reformed; he seeks for leniency, if not non-custodial sentence.
6. I have considered all the mitigations and address by the prosecution counsel. Indeed, a young lady aged 28 years was murdered in cold blood. She was defenceless and left behind a family.



7. I have considered the circumstances under which the deceased met her untimely death and the vicious attack on her body as demonstrated by the multiple injuries that she sustained as per the postmortem report dated February 14, 2019.
8. The accused scooped life out of a very young and productive person who has left behind a family who will continue to suffer trauma because of her brutal killing.
9. The accused is remorseful and seeks for lenient sentence. Punishment for murder, upon conviction under section 204 of the *Penal Code* is death penalty. However, in view of the decision in the *Francis Muruatetu & another v Republic* [2017]eKLR, the courts now have discretion in sentencing albeit death penalty remains lawful and constitutional and the court, upon conviction for murder, can, having regard to the circumstances of each case, impose death sentence where appropriate.
10. The accused has been in custody since February 13, 2019 which is over four years. Taking into account all the above, and the objects and purposes of punishment, I hereby exercise discretion and sentence the accused person herein Samwel Onyango Otieno to serve thirty-five (35) years imprisonment to be calculated from the date of his arrest on February 13, 2019.
11. The accused has a right of appeal to the Court of Appeal within fourteen (14) days of today.
12. This file is hereby closed.
13. I so order.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 2<sup>ND</sup> DAY OF JUNE, 2023**

**R. E. ABURILI**

**JUDGE**

