



**Republic v Oguna alias Uli (Criminal Case E001 of 2022)  
[2023] KEHC 20591 (KLR) (21 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20591 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL CASE E001 OF 2022  
WM MUSYOKA, J  
JULY 21, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**GEORGE OTIENO OGUNA ALIAS ULI ..... ACCUSED**

**JUDGMENT**

1. The accused herein, George Otieno Oguna alias Uli, is charged with murder, contrary to section 203, as read with section 204, of the [Penal Code](#), cap 63, Laws of Kenya, the particulars being that on December 17, 2021, at Emaholia village, Ebusakami Location, Luanda Sub-County, within Vihiga County, he murdered Abraham Ongute.
2. 5 witnesses testified. PW1, Dr. Dixon Mchana, was the pathologist who conducted autopsy on the body of the deceased. PW2, Bob Njeri, was an Assistant Chief for the area where the accused hailed from. A report was made to him of the attack on the deceased, and he took him to hospital, and he arrested the accused following the demise of the deceased. PW3, Florah Nanga Oluseno, was the person whose maize was allegedly being stolen by the accused, when he was caught in the act, by PW4, a villager elder. PW4 brought the accused to the home of PW3, but escaped before PW3 got out of her house. PW4, John Ayoro Omulama, was the village elder who caught the accused in the act of stealing maize from the farm of PW3. He walked together with him to the home of PW3, from where he ran away. He then invited the village elder for his area to come and view the damage/loss. The deceased came, viewed the maize farm, and they decided to report the matter to the father of the accused. The father of the accused told them that the accused was an adult who could be arrested and taken to the police. The deceased decided to go and arrest him. When they got to the house of the accused, the accused and the deceased fought, and the accused hit the deceased with a metal rod, on the head and chest. He called PW2, who came and the deceased was taken to hospital. the deceased died on the way to hospital. PW5, No. 110813 Police Constable Abdi Jillo, was the investigating officer.



3. I put the accused on his defence. He gave a sworn statement. He said that on that material day, he was attacked at his house by 4 people who were armed. He ran away from them, and they gave chase. One of them threw a metal bar at him, and he threw it back at him. He was arrested later that night, accused of having killed someone.
4. The principal elements of murder are proof of the death, the cause of it, the role of the accused person in the causation, and whether, if the accused caused the death, it was with malice aforethought.
5. On whether the deceased died, I have the evidence of PW2 and PW4. They were with the deceased as they took him to hospital, when he died. PW1 conducted autopsy on the body of the deceased, and produced the post-mortem report. The cause of death was said to be severe head injury, caused by blunt force trauma, following assault. The cause of death was linked to the accused, for PW4 said he hit the deceased with a metal rod. The accused appeared to raise the defence of self-defence, for he stated that some people invaded him, and they chased him. Someone in the group threw a metal rod, and the accused threw it back at the person who had thrown it. He did not directly concede to hitting anyone, but appeared to say that if the metal bar he threw hit someone, then his act was in self-defence.
6. Was the accused linked to that death? PW4 was positive that he saw the accused hit the deceased with a metal rod. The accused himself conceded that there was a metal rod involved, and he handled it, by way of throwing it at the person who had thrown it. PW4 testified that the hit was on the head, which aligned with the testimony of PW1. I take the defence statement of the accused with a pinch of salt. He said that he had met PW4, as he was going home, and PW4 was among the persons that came to his house, at the time he alleged he was attacked by 4 people. He also said he was drunk, suggesting that he did not know what he was doing, but he was still able to recall seeing PW4 on 2 occasions that night. He did not explain why he had to run away from the 4 people, if 1 of the 4 was a person well known to him. I am persuaded that the events unfolded in the manner narrated by PW4.
7. Did the accused have malice aforethought? A person who hits another on the head with a metal rod, with such a force as to cause death within minutes, would intend no other consequence than the death or grievous injury of his victim.
8. In view of everything stated above, I do hereby, find the accused herein, George Otieno Oguna alias Uli, guilty of the offence of the murder of Abraham Ongute, contrary to section 203 of the [Penal Code](#), as read with section 204 thereof, and I convict them accordingly, under section 322 of the [Criminal Procedure Code](#), cap. 75, Laws of Kenya.
9. For the purpose of sentencing, I direct the Vihiga County Director of Probation and Aftercare Services to look into the antecedents of the accused person, interview the family of the victim and the community, and file a report thereafter, within 30 days. The matter shall be mentioned thereafter, for compliance. The sentencing shall be done by my successor or successors at Vihiga.

**JUDGMENT DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS  
21<sup>ST</sup> DAY OF JULY 2023**

**WM MUSYOKA**

**JUDGE**

Mr. Erick Zalo, Court Assistant.

Appearances

Mr. Chigiti, instructed by the Director of Public Prosecutions, for the Republic.

Ms. Shijenje, Advocate for the accused person.

