



**Orara & another v Republic (Miscellaneous Criminal Application  
14A of 2023) [2023] KEHC 22713 (KLR) (21 September 2023) (Resentence)**

Neutral citation: [2023] KEHC 22713 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
MISCELLANEOUS CRIMINAL APPLICATION 14A OF 2023  
RPV WENDOH, J  
SEPTEMBER 21, 2023**

**BETWEEN**

**JARED ODIRA ORARA ..... 1<sup>ST</sup> APPLICANT**

**MICHAEL ORARA MALAKI ..... 2<sup>ND</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RESENTENCE**

1. Jared Odira Orara was convicted by J. Mrima for the offence of murder contrary to section 203 as read with section 204 of the *PC* together with the second accused who is now deceased. They were convicted of murdering Isilda Atieno Molo. The court sentenced the two to death.
2. Being dissatisfied with the conviction and sentence they filed an appeal to the Court of Appeal being criminal appeal No 1 9 of 2017. The Court of Appeal dismissed the appeal on conviction and sent this matter back to this court for purposes of resentencing on the basis of the case of *Francis Karioko Muruatetu* SCK petition No 15 of 2015 where the Supreme declared as unconstitutional, the mandatory death sentence for the offence of murder.
3. The accused in his mitigation stated that he is remorseful and a first offender; that while in custody he has learnt various trades and that he is ready to make amends and should be allowed to reunite with his family and be reintegrated in the society. The accused also relied on the Judiciary Sentencing Policy and its objectives. He relied on the decision of *Michael Kathewa Laichena & another v Republic* (2018) where J. Majanja, after considering all the mitigating and aggravating factors, resented the accused to 15 years imprisonment for the offence of murder. The accused also urged this court to take into account the period spent in custody and in prison when resentencing.



4. The prosecution counsel Mr Kaino opposed the application to resentence counsel submitted that in the directions issued by the Supreme Court on July 6, 2021 in the *Muruatetu case*, the court in resentencing should consider both the aggravating and mitigating factors such as:-
  - a) Age of the accused;
  - b) Whether offender is first offender;
  - c) Whether offender pleaded guilty;
  - d) The character and record of offender;
  - e) Remorsefulness of the offender;
  - f) The physical and psychological effect of the offence on the victims family ;
  - g) The manner in which the offence was committed;
  - h) The possibility of reform and social integration and re-adaption of the offender.
5. Counsel also urged that the court in resentencing has to consider the Judiciary Sentencing Policy and its objectives at paragraph 22.7
6. Counsel took into account how the attack took place in the presence of family members who were eye witnesses; the attack was planned and premeditated; that the accused used offensive and dangerous weapons a during the attack; that the accused targeted the neck and head and one was armed with a spear; that the accused's actions were repeated and the force used was great and excessive and the deceased died of severe blood loss resulting from the deep cut and on the shoulder and neck. Counsel urged the court to give the death sentence, which should serve as deterrence.
7. I have considered the submissions filed by both parties. The *Muruatetu case* did not do away with the death sentence under section 204 of the *Penal Code*. It merely held that it was unconstitutional because it takes away the courts' discretion in sentencing. In *Ruth Wanjiku Kamande v Republic* (2018) Appeal sustained J. Leisit's decision in which she sentenced the accused to death.
8. As pointed out by the prosecution counsel, the deceased met her death from cruel and unjustified acts of the accused and his father who is since deceased. It is something that they planned and premeditated. The offence took place in the presence of other family members who must have suffered great psychological trauma. A life was lost at the hands of the accused without justification.
9. Although the accused claims to be remorseful and that he has been rehabilitated, in my view, a deterrent sentence is preferred. Taking into account the accused's mitigation and the prosecution counsels objection and in exercise of this court's discretion, that accused spent about three years in remand, I hereby set aside the death sentence. I sentence accused to thirty five (35) years imprisonment. The prison sentence to commence on December 19, 2020 when he was sentenced by the High Court.

**DATED, SIGNED AND DELIVERED AT MIGORI THIS 21<sup>ST</sup> DAY OF SEPTEMBER, 2023**

**R. WENDOH**

**JUDGE**

**Judgment delivered in the presence of**

Mr. Kaino for the Respondent.

Appellant present.



Emma Court Assistant.

