



**Republic v Oidho (Criminal Case E019 of 2022)
[2024] KEHC 15647 (KLR) (9 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15647 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E019 OF 2022**

**DK KEMEL, J
DECEMBER 9, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

STEPHEN OTIENO OIDHO ACCUSED

SENTENCE

1. The accused herein Stephen Otieno Oidho was charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code vide the judgment of this court dated 13th June 2024. The particulars are that on 11/5/2022 at Awelo market, Barkowino sub-location, Bondo Sub-County within Siaya County jointly with others not before court murdered one Salim Amollo Opany. Vide the judgement of this court dated 18/6/2024, the accused was found guilty as charged and convicted accordingly.
2. Upon taking over this matter from my previous colleague Justice Ogembo, the parties herein agreed to proceed with the matter from where it had reached.
3. Mitigation and sentencing herein took place on 3/12/2024. Counsel for the defence submitted that the accused is a first offender and a young family man and the sole bread winner. That he is remorseful for offence and that he prays for leniency. It was submitted that he was arrested on 16/5/2022 and has been in custody since then and which period should be considered by the court.
4. The Learned counsel for the prosecution did not tender the submission and left it to court.
5. This court called for a pre-sentence report. The same dated 28/11/2024. The summary of which indicates inter alia; that the accused is not suitable for a supervised non-custodial sentence order; that he has a high risk of reoffending and would require custodial rehabilitation; that accused is a calculative, crafty and dishonest person that his peers have shunned him because he was handling one case after the other. The report further indicates that the accused is a cold hearted individual who can do anything



including killing to get money to support his lifestyle. It indicates that the accused killed his own friend just because he needed money.

6. I have considered the mitigation by counsel for defence. I have also considered the pre-sentence report. Under Section 204, the punishment for murder is a sentence of death. However, the Supreme Court in the case of Francis Karioko Muruatetu & 2 Others [2017] eKLR held that the mandatory imposition of a death sentence was declared unconstitutional and that courts should now receive mitigating circumstances from offenders and impose appropriate sentence. In most cases, the stiffest sentences are reserved for the worst offenders.

The circumstance of this case does not warrant a stiff sentence for accused but one thing is clear that the deceased died a very painful death in that the accused lured him to go to his house from where he alerted his colleagues to join him and snatched money from the victim and clobbered him to death. This was a robbery mission gone awry. The deceased did not deserve to die the manner he did. The accused herein and his companion should have been satisfied with the money stolen from him (deceased) but not kill him. This was senseless.

7. The report by the Pathologist Dr. Rita Aoko which was produced by Dr Daniel Wanjovu Juma (PW10) was that the body had multiple deep cut wounds on the face orbits, nose and mouth with sharp margins; deep cut wound on the neck extending to whole surface with major vessels visible; deep cut wound on scalp extending from temporal parietal and occipital region on the left side; skull fracture, deep cut wound on the right elbow joint with loose rope tied around the neck with no strangulation marks; internally on the head, a deep scalp cut would from right to left with fracture of the bones involved with haemorrhage that was horizontal and also posterior to anterior. Haemorrhage was below and above brain coverage.

The Doctor's opinion was that the cause of death was hemorrhagic shock, due to massive hemorrhage secondary to multiple cut wound trauma. The autopsy report was produced as Exhibit 1. It is quite clear that the deceased sustained very severe injuries and must have died a very excruciating and painful death carried out and supervised by none other than his friend, the accused herein.

8. The pre-sentence report has given a very negative view about the accused. It was indicated that the accused has a history of engaging in criminal activities. He has a high risk of re-offending and that he requires a long period of rehabilitation in order to change him to a better person which can only be offered by the prison department. The local administration and community members are in agreement that in order to stem run away criminal behavior in the locality, the offender should be imprisoned.

Finally, the accused does not take responsibility for the offence though he respects the decision of the court and willing to comply with it.

The Probation officer is of the view that the accused is not suitable for a supervised non-custodial sentence order. It was established in the probation report that the accused is a calculative, crafty and dishonest person that his peers have shunned him because he was handling one case after the other.

9. Looking at the circumstances of the case in totality, it is clear that the incident did not occur as a result of some disagreement between the deceased, accused and accused's companions. This was pure blue murder. The accused must have had a plan to eliminate the deceased and therefore invited him to his house. The deceased went in good faith oblivious of the danger. Again, there was a robbery with violence act upon the deceased before he died.

The circumstance was quite tragic. Based on the pre-sentence report and the totality of the evidence, the accused requires custodial rehabilitation before he can be released back to the society. The custodial rehabilitation will help to mould him into a better individual before being allowed to rejoin the society.



10. It is noted that the accused has been in custody all along and therefore such period spent must be taken into account during sentencing in line with the provisions of Section 333 (2) of Criminal Procedure Code.
11. In view of the foregoing observation, i sentence the accused herein Stephen Otieno Oidho to serve imprisonment for a period of thirty (30) years which shall commence from the date of arrest namely 16/5/2022.

DATED AND DELIVERED AT SIAYA THIS 9TH DAY OF DECEMBER, 2024

D.KEMEI

JUDGE

In the presence of:

Stephen Otieno Oidho.....Accused

Ooro F.....for Accused

M/s Mumu.....for Prosecution

Ogendo.....Court Assistant

