



**Republic v Otieno (Criminal Case E008 of 2022)  
[2024] KEHC 15578 (KLR) (6 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15578 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL CASE E008 OF 2022  
RE ABURILI, J  
DECEMBER 6, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**JACOB OLUOCH OTIENO ..... ACCUSED**

**SENTENCE**

1. The convict herein Jacob Oluoch Otieno was convicted on 20<sup>th</sup> November 2024 for the murder of Beryle Akoth Okoko. The accused and his counsel have mitigated. He has also given his mitigation orally and in writing. He is a first offender, an orphan, sole bread winner, has one child left behind by the deceased. He now is remorseful and regrets committing the offence. He had requested the prosecution to allow him plea bargain because he owned up committing the offence but the deceased’s family rejected the plea bargain offer. He has been in prison since his arrest in 2022 as he could not raise bond. He prays for a non-custodial sentence, that he has learnt lessons in prison.
  
2. I have considered all the mitigation presented in court orally and in writing. I have also considered the circumstances under which the offence of murder was committed. The accused person had an intimate relationship with the deceased who was a young lady aged 23 years. She was a college student. The accused was then aged 27 years old. The accused person travelled all the way from Nairobi to Kisumu, rented a lodging at Hotel ventakone, using an identity card of a different person Kevin Ng’an’ga Kimemia to hide his identity, went and called the deceased from college, led her to the lodging at the name Hotel where he ordered soda and chips and after they and eaten, he strangled her and left her lifeless body holding a bottle of alcohol in her hand then he sneaked out of the lodging unnoticed and travelled back to Nairobi. He was tracked by his phone movements, thanks to the modern technology and keen police investigators.



3. The accused may have wanted a plea bargain because he committed the offence yes, but the prosecution and the deceased family were not bound to accept plea bargain and I am glad that he now acknowledges committing the offence in his mitigation for lenient sentence.
4. The cases of femicide are on the rise in this country and in this case, it is not clear why the accused travelled all the way from Nairobi to Kisumu just to eliminate a college student and return.
5. Live and let live. There is no licence for anyone to eliminate another. Punishment for murder, upon conviction, as stipulated in Section 204 of the Penal Code, is death.
6. The Sentencing Policy Guidelines for the Judiciary as developed by the National Council on Administration of Justice in 2023 now clarifies for the Courts the measure of punishment to impose in murder cases. The Guidelines provide the following which I will adopt in meting out appropriate sentence for the accused person:
  - 5.2.2. The harm caused by such an offence is immeasurable. The sentence is not a measure of the value placed on the life of the victim. Therefore, the assessment of aggravating and mitigating features relating to the offence focusses on culpability. However, the victims' family may wish to make a statement to the court about the impact of the offence.
  - 5.2.3 In addition to the generic features contained in the GATS, features particularly relevant to murder may include but are not limited to:
  - 5.2.4 Aggravating Factors in Murder Cases:
    - i. A significant degree of planning or premeditation.
    - ii. The mental or physical suffering inflicted upon the victim before death. Factors such as the type of weapon used, torture or inhuman or degrading treatment prior to death will be relevant.
    - iii. The use of duress or threats to enable the offence to take place.
    - iv. The vulnerability of the victim e.g., due to age or disability.
    - v. The fact that the victim was providing a public service or performing a public duty. vi. Multiple victims or multiple perpetrators.
    - vii. Where the offence involved an abuse of trust. The relationship between the victim and the accused should be carefully considered.
    - viii. Offence was motivated by, or there was demonstrated hostility to the victim based on his or her race, gender, sex, sexual orientation (or presumed sexual orientation), pregnancy, marital status (so called 'honour killings' for example), health status (e.g., murder occurred because of the HIV status of the victim, or albinism), ethnicity, culture, dress, language, birth, or religious orientation (or presumed religious orientation).
    - ix. A history of assaults, threats, or coercion upon the same victim.
    - x. Absence of self-defence or provocation.
    - xi. The offence involved deliberate drugging or stupefying of the victim.
    - xii. Proven abduction or kidnapping of the victim before the murder was committed.



- xiii. Where a demand for ransom was made, signifying a financial motive.
- xiv. Concealing, destroying, or dismembering the body.
- xv. Where the murder was conducted in furtherance of a ritualistic practice such as witchcraft.

5.2.5 Mitigating features relating to murder might include:

- i. Lack of premeditation.
- ii. The offender suffered from a mental disorder or mental disability which lowered his degree of blame.
- iii. In a case of joint enterprise, the role the offender played may be lower than his co-accused. For example, in the resentencing of the Applicants in *Francis Karioko Muruatetu & 6 others v Director of Public Prosecution* [2019] eKLR the Judge categorised the offenders into four categories based on their culpability. The first category involved the architects of an offence e.g., those who financed the killing, the second category involves offenders who ensnared the deceased into his death, the third category is the henchmen, those who carried out the brutal killing and the fourth category involves offenders involved in the cover up of the offence by attempting to silence witnesses. The Judge sentenced the third category with the highest term of imprisonment and graduated the term down for the other categories.
- iv. That the offender was provoked.
- v. That the offender acted to any extent in self-defence or in fear of violence.
- vi. The age of the offender.

5.2.6 Where an unlawful killing is done without an intention to kill (or cause grievous bodily harm?), the offence of manslaughter may be made out. In sentencing such cases, as with murder, the focus must lie primarily upon culpability. With manslaughter cases, the degree of culpability may vary widely, from the ‘one punch’ manslaughter to the case involving a prolonged campaign of domestic violence which ultimately results in the victim’s death. The focus must be on the offender’s actions and intentions at the time of the crime in assessing the degree of culpability. Sometimes a nuanced approach is called for.

5.2.7 In addition to the generic features contained in the GATS, some features that are relevant to assessing culpability in manslaughter cases include, but are not limited to the following:

- i. Where death was caused in the course of an unlawful act which involved an intention by the offender to cause harm falling short of grievous bodily harm e.g., one punch that caused the victim to fall and suffer a catastrophic and fatal brain injury.
- ii. Where death was caused in the course of an unlawful act that carried a high risk of death or grievous bodily harm which was or ought to have been obvious to the offender e.g., driving a motor vehicle dangerously through a crowded street.
- iii. Where death was caused in the course of committing or escaping from a serious offence.
- iv. Where the offender tried to conceal the offence by concealing, dismembering, or destroying the body.



- v. Where death was caused in the course of self-defence or defence of another (though not amounting to a defence).
  - vi. Where there was no intention by the offender to cause ANY harm AND no obvious risk of anything more than minor harm e.g., the offender pushed the victim out of the way and the victim fell and suffered a fatal injury.
  - vii. Where the offender's responsibility was substantially reduced by mental disorder, learning disability or lack of maturity. Examples might include the woman who suffers severe post-natal depression, or the war veteran who suffers posttraumatic stress disorder to the extent that he behaves in a way that is erratic and violent in the face of ordinary day-to-day stressors.
  - viii. Where there has been a history of violence towards the victim by the offender, this might be relevant to sentencing.
  - ix. Significant mental or physical suffering caused to the deceased.
  - x. Where the offence involved use of a weapon.
  - xi. Offence committed in the presence of children (particularly relevant to domestic violence deaths)."[emphasis added]
7. Applying the principles set out in the *Francis Muruatetu & Another* [2017] eKLR on Sentencing in murder cases as adopted in the *Judiciary Sentencing Policy Guidelines* developed by the National Council on Administration of Justice, 2023, and the purposes and objects of sentencing as contained in the said *Judiciary Policy Sentencing Guidelines*; noting that this is Gender based violence case, a young lady lost her life and left behind a child, I exercise discretion and sentence the accused person to serve Forty (40) year imprisonment to be calculated from 19<sup>th</sup> March 2022 when he was arrested from Nairobi and brought to Kisumu for investigations and he was not released on bond.
  8. Right of Appeal to the Court of Appeal is 14 days of today, explained.
  9. The pauper brief advocate Ms. Lukasile is discharged. Her fees to be settled upon presentation of the fee note.
  10. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 6<sup>TH</sup> DAY OF DECEMBER, 2024**

**R. E. ABURILI**

**JUDGE**

