



**Republic v Otieno (Criminal Case E004 of 2021)
[2024] KEHC 15526 (KLR) (6 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15526 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E004 OF 2021
RE ABURILI, J
DECEMBER 6, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

COLLINS OTIENO OTIENO ACCUSED

SENTENCE

1. The accused person herein Collins Otieno Otieno was on 20th November 2024 convicted of the offence of murder contrary to Section 203 of the [Penal Code](#).
2. The accused has now been accorded the opportunity to mitigate. He is a first offender, he is aged 32 years old and is said to be the sole bread winner of the family because he is the sole son. The deceased was his wife. He is remorseful. He has 3 children. He has a mother who was displaced by the floods and he wishes to go and resettle her.
3. I have considered the mitigations. I have also considered the circumstances under which the offence was committed. There was no evidence of provocation from the deceased to warrant such horrendous death. The accused person unlawfully killed his wife by cutting her using a panga and the cuts were so deep.
4. 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. The harm caused by such an offence is immeasurable. The sentence is not a
 - 2.2. 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. In addition to the generic features contained in the GATS, features particularly
2.3 relevant to murder may include but are not limited to:

5. Aggravating Factors in Murder Cases:

2.4

- 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. Mitigating features relating to murder might include:

2.5

- 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. 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.
- 2.6
- 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]

5. I have considered the above [sentencing Policy Guidelines](#), 2023 and the objects and purposes of sentencing as well as the guidelines/principles espoused in the [Francis Muruatetu & Another vs Republic](#) [2017] eKLR, the age of the accused, that he is a first offender, this being a gender-based violence crime (femicide) and his responsibility to his children who must now learn to live without him for a while since he eliminated their mother, for reasons known to him. From the evidence adduced, the accused cut the deceased with a panga as him and the deceased were pulling their child in both directions and no Solomonic wisdom could prevail even after a neighbour who heard the noises and went to intervene, to no avail. The accused was determined to cause grievous harm to the deceased, considering that weapon, a panda used to cut her then in his defence he pretended that the deceased was attacked by robbers. What a pathology of lies intended to escape justice!
6. Punishment for murder, upon conviction, as stipulated in Section 204 of the [Penal Code](#) is death. However, in view of the mitigation, and the discretion of this court in sentencing, the accused is hereby sentenced to serve Thirty (30) years imprisonment to be calculated from the date of his arrest on 18th January 2021.
7. Right of appeal to the Court of Appeal is 14 days of today explained.
8. This file is now closed.
9. The pauper brief advocate Ms. Omollo is hereby discharged. Her fees to be settled upon filing of her fee note.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 6TH DAY OF DECEMBER, 2024

R. E. ABURILI

JUDGE

