



**Republic v Owuor & another (Criminal Case E006 of 2023)
[2024] KEHC 15427 (KLR) (6 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15427 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE E006 OF 2023
RE ABURILI, J
DECEMBER 6, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

MAGDALENE ATIENO OWUOR 1ST ACCUSED

MATHA AWINO OTIENO 2ND ACCUSED

SENTENCE

1. The two (2) accused persons herein Magdalene Atieno Owuor and Matha Awino Otieno were on 20th November 2024 convicted of the murder of Alga Akinyi, as per the Information for murder dated 5th March 2023.
2. They have mitigated on their own and through their advocate Mrs. Peres Odoyo. They are first offenders, have children who depend on them, they are also young people under the age of 35 years old. They plead for leniency of the court and they seek for forgiveness from the deceased's family.
3. The 1st accused has 2 children all under 15 years while the 2nd accused has 3 children, one is sick. She states that she is sick and is a widow from June this year. that the 1st accused was going to look for food when she was to be in conflict with the law. The 2nd accused admits that indeed she committed the offence but seeks forgiveness.
4. Both accused persons pray for leniency of the Court. They pray for non-custodial sentence.
5. The victim's maternal aunt is present in court. She is Grace Odingo. She took oath and prayed for punishment to be meted out on the two accused persons in accordance with the law. She stated that she was the one left to care for the deceased's three children whose father had died just three months prior to Alga's death. She is struggling to raise the 3 children who are aged 8, 7 and 4 years respectively.



6. As I sentence the 2 accused persons, I am aware that this is a gender-based violence crime. It is important for all to know that killing another person is a serious offence and unless it is in self defence or under any circumstances excusable as provided for in law, no person has the right to take away the life of another.
7. Those who kill others should not expect mercy from the court. This is not a court of mercy but a court of justice and fairness. And justice must be served for both the deceased victim and the accused.
8. For the 2 accused persons herein, justice has already been served. They were accorded due process and a fair trial and that is a right guaranteed to them under Article 50(23) of the *Constitution*.
9. A person who has children or is sick or has responsibilities to third parties should always think twice before embarking on a journey to go and kill another person. There are many ways of resolving disputes and killing another person or sacrificing that other person cannot be the solution to the dispute.
10. From evidence adduced on record, the 1st accused with the help of the 2nd accused left their home as co-wives and their mission which was accomplished on 15th March 2023 was to kill Alga Akinyi.
11. The deceased was expectant. The unborn child had to die the mother's death. The accused persons pierced a sharp knife into the body of the deceased, penetrating through the heart causing what the doctor described as massive internal bleeding. The deceased died a painful death.
12. She also left behind three children who are now totally orphaned. Despite the pleas for non-custodial sentence, the circumstances of this case do not call for non-custodial sentence as there are no mitigating circumstances given in evidence for the heartless murder of the deceased.
13. The children of the accused person, regrettably, must now learn to live without their mothers, albeit for a while, the same way the children of the deceased have been left total orphans.
14. Only in that manner can this court have done justice and send a stern warning to those who think they can kill others without any just cause and get away with light sentences. There was no evidence of provocation of the accused persons herein by the deceased who was far away from her house and the accused person's house. The accused persons waylaid the deceased. They planned and succeeded in executing the offence.
15. 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 two accused persons:
 - 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]
16. Applying the above principles of sentencing set out in the sentencing policy guidelines for the Judiciary and the *Francis Karioko Muruatetu & Another v Republic* [2017] eKLR and exercising discretion in view of the mitigations received, I hereby sentence each of the two accused persons to serve Twenty Five (25) years imprisonment, taking into account the period from date of arrest on March 15, 2023 to June 2, 2023 when they were released on bond and from September 29, 2024 to today December 6, 2024 when their bonds were cancelled.



17. Right of appeal is 14 days to the Court of Appeal explained.
18. The sureties to be discharged and their securities to be released to them.
19. The pauper brief advocate Ms. Ooyo is also discharged. Her fees to be settled upon presentation of the fee note.
20. This file is closed.

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

R. E. ABURILI

JUDGE

