



**Obala alias Odhare v Republic (Criminal Appeal 243 of 2018)
[2025] KECA 5 (KLR) (10 January 2025) (Judgment)**

Neutral citation: [2025] KECA 5 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 243 OF 2018
HM OKWENGU, HA OMONDI & JM NGUGI, JJA
JANUARY 10, 2025**

BETWEEN

WILLIAM OTIENO OBALA ALIAS ODHARE APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the Judgment of the High Court of Kenya at Homa Bay (Majanja, J.) dated 6th May, 2016 in H.C.CR.C. No. 3 of 2014)

JUDGMENT

1. The appellant, William Otieno Obala, was the accused person in the trial before the High Court in Homa Bay High Court, Criminal Case No. 3 of 2014. He was charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code. The particulars of the offence were that on 21st April, 2012, at Koyolo Sub-location, Kotieno Location, Rangwe Division within Homa Bay County, William Otieno Obala, jointly with others not before court, murdered Elizabeth Aoko Oyoo.
2. The appellant pleaded not guilty and a fully-fledged hearing ensued. At the conclusion of the trial, he was convicted and mandatorily sentenced to death as per the law at that time.
3. The appellant was aggrieved by that decision and has lodged the present appeal. In his Memorandum of Appeal, the appellant raised seven (7) grounds of appeal, which are that:
 1. The learned trial Judge erred in law in failing to appreciate that the prosecution had failed to prove its case to the standard required in law, that is, proof beyond reasonable doubt.
 2. The learned trial Judge erred in law and fact in convicting the appellant on contradictory, inconsistent and insufficient evidence.



3. The trial court failed to take into account, appreciate and raise issues with the prosecution's failure to call material, competent and compellable witnesses without ascribing any reason or explanation to the same.
 4. The learned trial Judge misapprehended the facts, applied wrong legal principles, and drew erroneous conclusions to the prejudice of the appellant.
 5. The learned trial Judge erred in law in convicting the appellant with murder when the entire trial lacked all the ingredients of murder as per the law.
 6. The trial court erred in fact and in law when it disregarded the accused defence of alibi.
 7. The sentence imposed on the appellant is manifestly harsh and excessive in the circumstances.
4. Consequently, the appellant prayed that the appeal be allowed and the judgment and sentence by the High Court be set aside and quashed, and he be set at liberty.
 5. At the trial court, the prosecution called a total of six (6) witnesses. The evidence that emerged from the trial was as follows.
 6. Margret Auma Uro, the deceased's daughter, testified as PW4. She told the court that she went to Gem on 21st April, 2012, to see her mother, the deceased. She arrived at about 6.00pm. The deceased gave her chicken to prepare for dinner. However, at around 8.30pm, just as she and the deceased were getting ready to have dinner, they heard some footsteps outside the house and then there was a knock at the door. The door, which was not locked, flew open and three people got into the house. Two of them headed straight for the deceased, while one stood at the door. PW4 recognized one of the three people as the appellant. It was her testimony that the appellant was the first person who got into the house with a panga in his hand. He started slashing the deceased's head, face and arms with the panga. PW4 further told the court that she clearly saw the appellant and knew him well as he was their immediate neighbour in the village; and on the material night, he wore a blue T-shirt. She had known him as Odhare since their childhood.
 7. At the time of the incident, PW4 and the deceased were both seated at the table, opposite each other. On top of the table, was a tin lamp. PW4 stood up and tried to protect her mother, during which time she also got cut (she showed the trial court the cuts on her; and the table fell together with the tin lamp, which went off. They both started yelling and the assailants ran off. Immediately thereafter, two neighbours went by the house and asked about what had happened but they did not provide any assistance. PW4 then went and called Elizabeth Ouma Ajwang (PW1), a village elder and relative to the appellant, and told her what had happened. Afterwards, she ran back to the house to take care of her mother.
 8. Immediately after, PW1 went to the deceased's home with some people who took the deceased to Rangwe Hospital where she was given first aid and transferred to Homa Bay District Hospital. Both PW4 and the deceased were treated at the hospital. However, while undergoing treatment, the deceased succumbed to her injuries three days later. Upon the death of the deceased, PW4 reported the incident at Rangwe Police station and also recorded her statement.
 9. Elizabeth Ouma Ajwang, a village elder and a granddaughter to the deceased testified as PW1. She told the court that she knew the appellant from the time she got married in Gem as he was her neighbour in the village; and the deceased was her grandmother. On the material night, PW4 went to her house whilst shouting for her and her family to come out as the deceased had been attacked. She responded to the call and went to the deceased house. She saw that the PW4's left hand had been cut at the wrist.



She asked her what happened and PW4 told her that the appellant had attacked them at the house. She was accompanied by some family members to the deceased house whereupon they found the deceased lying on the floor in a pool of blood; and with cuts on her head, nose and hands. She asked the deceased what had happened and she told him that she had been cut by the appellant. They took the deceased to Rangwe Hospital but were referred to Homa Bay District Hospital the next day.

10. Charles Otieno Lusi, a grandson to the deceased, testified as PW5. He recalled that on 7th April, 2012, at about 6.00am, he went to plough the deceased's shamba together with his brother. However, the deceased told them not to plough the entire shamba because she had been threatened by the appellant to leave the shamba, failure to which she would be killed. He did not take the matter seriously and instead thought that it was normal old age delusions since the deceased was about 101 years old. Later on 14th April, 2012, the deceased went to see him and told him that she had been threatened by three people, although she did not mention their names. He gave the deceased Kshs. 300.00/= to take a motorcycle to Rangwe and report the matter; but said that he did not know whether she actually went and reported the said matter.
11. Thereafter, on the material night, he was woken up by PW4 who was screaming; and had a cut on her left arm which was bleeding. She told them that they had been attacked at the deceased's house. Together with other people, they went to the deceased's house and found her lying on the floor in a pool of blood. She had been cut and was bleeding, but was still alive. They took her to Rangwe Hospital and while there, he asked her what happened. The deceased told him that the appellant and other people she did not know, assaulted her. He reported the matter to the police station. Later on, the deceased was transferred to Homa Bay District Hospital but succumbed to her injuries on 25th April, 2012.
12. Afterwards, PW5 identified the body of the deceased before the postmortem examination was done. He said that the deceased had panga cuts on the head, arms and the back, with at least 9 panga cuts on the head and arms.
13. Richard Otieno Olang, a grandson to the deceased testified as PW2. He also identified the body of the deceased before the postmortem examination was done. He said the deceased had multiple injuries on the forehead, face, mouth, hands, mouth and other parts of the body. He also told the court that the deceased and the appellant had a land boundary dispute which was resolved by the Lands Department; and the appellant was warned not to trespass.
14. Dr. Francis Ochieng was PW3. He testified on behalf of Dr. Ojwang' who conducted the postmortem on the deceased, but had died by the time the trial was ongoing. Dr. Ojwang' observed that the deceased body had 8 multiple linear cut wounds on the head and other multiple cuts on the limbs. She also had four linear skull fractures at the back, front and on both sides; and there was bleeding into the brain substance. He concluded that the cause of the deceased's death was head injury; and PW3 opined that the injuries were caused by the use of a sharp object. He produced the post-mortem report.
15. The final witness, PW6, was Sgt. John Nganga, the investigating officer who gave formal evidence about how the investigations unfolded. He told the court that PW5 made a report on 22nd April, 2012, that his neighbour (the deceased and her daughter) had been attacked by a person who was known to them, together with two other unknown persons. He identified the assailant as the appellant who he said had a dispute with the deceased over a shamba and used to threaten her. PW5 also said that he had advised the deceased to report the threats made by appellant to the police, but she never did. On 23rd, April, 2012, he sent his colleague, PC Juma Kombo to go and visit the deceased at the hospital. However, on that day, she could not talk. But he was informed that prior, she was able to talk and had even mentioned the appellant as the person who assaulted her.



16. On 25th April, 2012, he received a report from the Assistant Chief that the deceased had died on the night of 24th April, 2012. The Assistant Chief also told him that the village youths had ganged up and destroyed the appellant's house. They proceeded to the homes of both the deceased and the appellant; and true to the report made by the Assistant Chief, they found that the appellant's house had been destroyed and there was no one at the home, as his wife had fled. At the deceased's home, they found several mourners who they interrogated and asked some to go to the police station and record statements.
17. PW6 told the court that there was nothing remarkable at the scene of crime as four days had lapsed since the incident happened; and the scene had been disturbed. He also did not recover the murder weapon. Thereafter, they began looking for the appellant who at the time, was not in the village. However, on 23rd January, 2014, two years after the incident, the appellant resurfaced and went to the police station; and reported that he was being chased by the deceased's relatives. PW6 said that he knew the appellant prior to the incident and had at one time gone to his home after he was suspected to be selling bhang. Therefore, since he knew the appellant, he arrested him immediately he went to make his report as the case was still open. He then took him for a mental assessment at Homa Bay District Hospital, whereupon he was found fit to stand trial; and he charged him with the offence of murder.
18. When he was placed on his defence, the appellant gave sworn testimony. His attempt to call a witness, his estranged wife, failed because she could not be traced by the Police. This was confirmed by one, Inspector Fred Bunusu, who told the court that the appellant gave him a phone number to call, as he wanted his assistance in helping him look for his wife, one Everlyn Akoth Adul. Inspector Fred informed the court that he called the said phone number but the recipient (who was Evelyn's neighbour) told him that he knew Everlyn although she had been married several times, hence he could not find her. He said that he personally gave this information to the appellant, who thereafter, did not tell him anything else.
19. The appellant denied murdering the deceased, who was his step- mother as she had been levirated by his father. He said that they were neighbours and their homes were separated by a fence.
20. He testified that at the time of the incident, he used to work at Capital Fish Industry in Homa Bay town and would normally go to work at 6.00pm and return home in the morning at 6.00am. He said that he did not have a problem with the deceased and did not know that she had been attacked since he was at his place of work. He denied the accusations made by the witnesses and said that the deceased's family demolished his house and took everything; and also chased his wife and children. He also said that he reported the matter to the Rangwe Police Station three different times but they did not take any action.
21. It was his testimony that he did not run away from the police or go missing. Rather, after his house was burned down and threats made against his life, he could not go back to the village. In addition, he said that the company he worked for was later closed down and thereafter, he remained in Homa Bay where he used to engage in fishing to earn a living.
22. However, during cross examination, he recanted his story and stated that he would normally go home at the end of the month, after collecting his salary.
23. The appeal was argued by way of written submissions by both parties. During the virtual hearing, learned counsel, Mr. Okoth, appeared for the respondent. There was no appearance for the appellant, whose advocate was learned counsel, Ms. Lukasile. Therefore, since both parties filed written submissions, the Court opted to rely on the same.



24. The appellant's counsel challenged the trial court's conviction on two main grounds: the sufficiency of evidence and inconsistencies in the prosecution's case.
25. On the issue of sufficiency of evidence, Counsel argued that the prosecution failed to prove beyond a reasonable doubt that the appellant had the mens rea (criminal intent) to commit the crime. He relied on precedents like *Miller vs. Minister of Pension (1947) ALL ER 372*, emphasizing that the standard of proof in criminal cases is beyond reasonable doubt. Counsel also relied on cases such as *Mary Wanjiku Gichira vs. Republic, Criminal Appeal No. 17 of 1998 (Unreported)* and *John Chebichii Sawe vs. Republic, Criminal Appeal No. 2 of 2002* for the proposition that suspicion, no matter how strong, cannot form the basis for a conviction. Counsel pointed out that key prosecution witnesses, such as PW1 and PW5, testified that there was no clear evidence of a land dispute or motive. Additionally, despite threats being mentioned, the deceased never reported them to the police. The prosecution also failed to call crucial witnesses, such as the neighbors who allegedly witnessed parts of the incident, leaving gaps in the case.
26. Counsel for the appellant also argued that the prosecution case was marred with inconsistencies and contradictions. He highlighted what he saw as contradictions in the testimonies of key witnesses (PW1, PW4, and PW5). For instance, while some witnesses claimed there were three attackers, others mentioned only two. Discrepancies also arose regarding the weather conditions during the incident, the location of the deceased's body, and the events following the attack. Counsel questioned the reliability of PW4, arguing her testimony was inconsistent and unreliable. In particular, Counsel strongly argued that PW4's evidence on identification should be viewed with a lot of circumspection given the night conditions. Citing cases like *John Chemengich Wache vs. Republic* and *Philip Nzaka Watu vs. Republic [2016] eKLR*, counsel argued that inconsistencies and doubt in the prosecution's case should prevent a conviction.
27. In summary, the appellant asserted that the evidence presented was insufficient, inconsistent, and unreliable, and urged the Court to overturn the conviction.
28. On the last issue of sentencing, counsel submitted that the death sentence meted out on the appellant is bad in law and should be quashed. For this proposition, she relied on the Supreme Court's decision in *Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR*. Noting that the sentencing in this case was done before this Supreme Court decision, counsel prayed that this Court remits this file back to the trial court for a re-sentencing hearing.
29. Opposing the appeal, the respondent summarized the grounds of appeal into four issues of determination as follows:
 - a. That the prosecution failed to prove the charges beyond reasonable doubt.
 - b. That court relied on evidence of a single identifying witness.
 - c. That the witness testimonies were contradictory and inconsistent.
 - d. That the death sentence meted out was unreasonable and unconstitutional.
30. On the first issue, Mr. Okoth submitted that the prosecution proved their case beyond reasonable doubt and established malice aforethought as provided for under section 206(a), (b) and (c) of the Penal Code. In this regard, he argued that the doctor established that the cause of the deceased death was a head injury which was consistent with the nature of attack described by the witnesses during trial; and malice aforethought could be established by the extent of injuries on her head and skull. He also submitted that malice aforethought could be established from the fact that the appellant colluded



with others and attacked the deceased and PW4. According to counsel, this was a planned ambush orchestrated to kill the deceased who was elderly and could not protect herself.

31. On the second issue, counsel argued that PW4 identified the appellant as one of the assailants who attacked them; and she could not have mistaken his identity as the same was by recognition since they were not strangers to each other.
32. As regards the appellant's argument that the prosecution case was marred with contradictions, counsel rejected the appellant's submissions that the prosecution witnesses were inconsistent in their recollection of the events that led to the death of the deceased. In any event, he argued that if there were any contradictions in their testimonies, the same were minor contradictions that did not shake the substance of the prosecution case. For this proposition, he relied on the case of Joseph Maina Mwangi vs. Republic, Criminal Appeal No. 73 of 1993, wherein it was held that discrepancies are bound to be in any trial. However, in considering those discrepancies, the appellate court must be guided by the wording of section 382 of the Criminal Procedure Code viz whether the discrepancies are so fundamental as to cause prejudice to the appellant or are inconsequential to the conviction and sentence. Based on this authority, counsel contended that the discrepancies alluded to by the appellant were minor and did not in any way prejudice the appellant. He insisted that the identification of the appellant was proper and he was known to PW1, PW2 and PW4. Further, the prosecution case was solid enough, hence the conviction was safe.
33. Counsel argued that the Francis Karioko Muruatetu case did not apply to this matter, as the trial judge did not impose the death sentence due to its mandatory nature but exercised discretion after considering the appellant's mitigation. Counsel agreed with the judge's reasoning that the crime was committed in a cruel manner, warranting the maximum sentence under the law. Additionally, counsel argued that the appellant failed to present evidence of reform, remorse, or sufficient reasons to justify a reduced sentence. Counsel urged the Court to uphold both the conviction and sentence or, if resentencing was considered, to impose a term of at least 40 years to ensure justice is both done and seen to be done given the heinous manner in which the crime was committed.
34. This being a first appeal, our duty as the first appellate court is well laid out in *Okeno -vs- Republic* [1972] EA 32.

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (*Pandya v. R.*, [1957] E. A. 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (*Shantilal M. Ruwala v. R.*, [1957]E.A. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see *Peters v. Sunday Post*, [1958] E. A. 424.”

35. With that obligation in mind, we have carefully considered the evidence that was before the High Court, the contending oral and written submissions made before us, and the law. The appellant is aggrieved by the judgment of the High Court in which he was convicted of murder contrary to section 203 as read with section 204 of the Penal Code. The question that we must determine is whether the ingredients of the offence of murder were established.



36. The ingredients of murder were identified by this Court in *Anthony Ndegwa Ngari v Republic* [2014] eKLR as follows:

“...that the death of the deceased occurred; that the accused committed the unlawful act which caused the death of the deceased; and that the accused had malice aforethought.”

See also *Joseph Kimani Njau v Republic* [2014] eKLR.

37. Differently put, the prosecution was required to prove that the deceased died; that her death arose as a result of a direct consequence of an unlawful act or omission on the part of the appellant, and, if so, that the appellant committed the unlawful act or omission with malice aforethought.

38. Neither party in the instant case denies the fact of death of the deceased. PW2, a grandson to the deceased; PW4, a daughter to the deceased; and PW5, another grandson to the deceased, all saw the deceased after she had died. PW2 and PW5 identified the body at the mortuary for postmortem examination. Dr. Ojwang performed the autopsy. He formed the opinion that the deceased had died as a result of a head injury caused by a sharp object. An autopsy report was produced on behalf of Dr. Ojwang’ by Dr. Francis Ochieng’.

39. The main question for determination, therefore, is whether it is the appellant who caused the death of the deceased; and whether he did so with malice aforethought.

40. The prosecution theory was straightforward. It was that the appellant and the deceased had a land dispute which drove the appellant to murder the deceased. Three witnesses testified about the bad blood between the deceased and the appellant: PW2; PW4 and PW5. PW5 testified that the deceased had told him that she had received some threats and had encouraged her to report to the police, although he was unsure if the deceased had actually made the reports.

41. The prosecution case was pivoted on direct eye witness account of PW4, the deceased’s daughter, and a dying declaration made to PW1, a village elder and a relative to the deceased. The testimony of PW4 was straightforward. She was at home with the deceased at around 8:00pm. They were having dinner. Three people barged in after a brief knock. She immediately recognized the appellant as one of the men. The men went straight for the deceased. The appellant had a panga. He used it to slash the deceased severally. In the course of the murderous attack, PW4 attempted to shield her mother, and she got cut in her arms. She raised alarm and neighbours rushed to the house. The assailants fled - leaving the deceased critically injured. The deceased succumbed to the injuries days later.

42. PW4 was, naturally, the most critical witness. Her evidence was one of identification. As our courts have variously said, identification evidence must be received with much caution because it can lead to wrong convictions where there is error in identification. Courts have developed principles to test identification to make sure it is ironclad before it can be relied on to convict.

43. In Kenya, courts use specific principles to assess the reliability of identification evidence in criminal cases. These principles, enunciated in cases such as *Wamunga vs. Republic* (1989) KLR 424 and *Nzaro vs. Republic* (1991) KLR 70, ensure that such evidence is credible and not based on suspicion or error. The first consideration is the circumstances under which the identification was made. Courts examine factors such as the lighting at the scene, the distance between the witness and the suspect, and the duration the witness had to observe the suspect. The method of identification is another key factor. Courts exercise caution when dealing with single witness identification, particularly if no corroborative evidence is available, or dock identification, where a suspect is identified in court without a prior identification parade. However, Courts have pointed out that the risk of misidentification is vastly reduced when the identification evidence is one of recognition.



44. In the present case, after laying out the principles rehashed above, the learned Judge analyzed the identification evidence thus:

At the time of the incident, PW4 and the deceased were seated in a small room which was illuminated by a tin lamp. PW4 was able to see the accused when he came in and she immediately recognised him as Odhare. Odhare was not a stranger either to PW4 or the deceased. Apart from the testimony of PW1 and PW4 who knew the deceased very well, PW2, a grandson to the deceased, testified that the accused was a neighbour to the deceased as they owned the neighbouring plots. On his part, the accused confirmed that he referred to the deceased as his step mother. I find that the conditions for positive identification were clearly satisfied. The small room which was illuminated by the tin lamp, the close encounter between the deceased, PW4 and the accused within the confined space coupled with recognition of the accused leave no doubt that the accused was clearly identified as the assailant.

45. We find this analysis apt and has no errors that invites our intervention. We would only add that in addition to recognition, the identification evidence is fortified by the fact that PW4 immediately reported to the police and named the appellant as the person who had attacked them.
46. In the present case, as the learned Judge correctly analyzed, the identification evidence is further fortified by dying declaration evidence. The dying declarations were made by the deceased to two different people: PW1 and PW5. This is what the learned Judge said in his analysis:

The prosecution case is also buttressed by the statements made by the deceased identifying the accused as her assailant. When PW1 and PW5 asked her for the identity of the assailant, she mentioned that she was attacked by Odhare and other people she did not know. The statement made by the deceased to PW1 and PW5 falls within the *Evidence Act*. Such a statement must however be received with the necessary caution and circumspection although it is not a requirement of law that it must be corroborated to support the conviction. (See *Choge v Republic* [1985] KLR 1 and *Pius Jasunga s/o Akumu v R* [1954] 21 EACA 331). As I have found, the accused was clearly seen and recognized by the deceased and PW1. The deceased made the statement to identifying (sic) the accused to two separate people at two separate times hence I find her declaration credible.

47. Again, we find this analysis to be on point. The dying declarations made by the deceased to PW1 and PW5 mutually reinforce the identification evidence by PW4 to lead to the ineluctable conclusion that it is the appellant who viciously attacked the deceased. The evidence of motive, as correctly analyzed by the trial court, only adds to the compelling nature of the evidence tying the appellant to the crime. So does the fact that the appellant fled the village for two years after the homicide: this was conduct inconsistent with innocence and fortified the prosecution case that the appellant was among those who perpetrated the murder.
48. We also agree with the trial court that the nature of the injuries inflicted on the deceased (several cuts on the head) as well as the weapon used – a panga – are testament to the fact that the appellant had malice aforethought in committing the crime. In *Republic v Tubere s/o Ochen* [1945] 12 EACA 63,



this Court acknowledged that in determining whether malice aforethought has been established the following elements should be considered:

“The nature of the weapon used; the manner in which it was used; the part of the body targeted; the nature of the injuries inflicted either a single stab/wound or multiple injuries; the conduct of the accused before, during and after the incident.”

See, also, Republic vs. Ismail Hussein Ibrahim [2018] eKLR.)

49. From the evidence on record, the appellant cut the deceased with a panga eight times on the head and also cut her multiple times on the limbs. The nature of the attack; the intensity of it; the parts of the body targeted; and the weapon used are sufficient to establish malice aforethought in this case.
50. We have also considered the alleged contradictions and inconsistencies in the prosecution case. The test that the court utilizes on the effects of contradictions or inconsistencies on the prosecution case is a substantive one: it inquires whether the contradictions or inconsistencies in the prosecution evidence are to such an extent that a reasonable person would be left in doubt as to whether the charges were proved, or whether the contradictions (if any), are so material that the trial court ought to have rejected the evidence. Differently put, not every inconsistency, however small, introduces reasonable doubt to the prosecution case. See [Erick Onyango Ondeng' v Republic \[2014\] eKLR Criminal Appeal No. 5 OF 2013](#). Here, the alleged inconsistencies according to the appellant ranged from differences in evidence whether there were two or three attackers (although it is noteworthy there was only one eyewitness to the attack and she testified that there were three attackers); the exact weather conditions on the night; and the exact location the deceased was found in her house. All these discrepancies, if at all, had no bearing on the root of the charge and its ingredients. They do not affect the substance of the prosecution case.
51. In the end, therefore, we are satisfied that the conviction of the appellant was safe and hereby affirm it.
52. Turning to the appeal against sentence, we take cognizance of the Supreme Court decision in Francis Karioko Muruatetu & Another vs. Republic [2017] eKLR (supra), in which the mandatory death sentence under section 204 of the Penal Code was declared unconstitutional. The sentence in this case was imposed before this landmark decision. It follows that at the time the learned Judge imposed the death sentence on the appellant, he laboured under the existing jurisprudence which provided that the death sentence was mandatory. Indeed, the learned Judge explicitly stated so. We, therefore, agree with the appellant that the death sentence imposed is one for setting aside.
53. We have, instead, looked at the circumstances of the crime, offender, and victim's family as a sentencing court is required to do in fashioning an appropriate sentence. In doing so, we have considered that the appellant was a first offender; elderly and sickly. These are extenuating circumstances. We have weighed them against the objective seriousness of the offence committed: a vicious murder on an elderly woman; one planned and perpetrated by a gang of at least two people. There is no doubt that the circumstances call for a stiff custodial sentence. In our view, imprisonment for thirty (30) years is appropriate and we hereby sentence the appellant to that period.
54. The upshot is that the appeal against conviction fails and is hereby dismissed. The appeal against sentence minimally succeeds. The death sentence imposed upon the appellant is hereby set aside. In its place, we substitute a sentence of thirty (30) years imprisonment. The record shows that the appellant was arraigned in court on 27th January, 2014, and has since been in police custody. Therefore, in compliance with section 333(2) of the Criminal Procedure Code, we direct that the imprisonment period shall be computed to begin on that date.



55. Orders accordingly.

DATED AND DELIVERED AT KISUMU THIS 10TH DAY OF JANUARY, 2025.

HANNAH OKWENGU

.....

JUDGE OF APPEAL

H.A. OMONDI

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JUDGE OF APPEAL

JOEL NGUGI

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

