



REPUBLIC OF KENYA



**KENYA LAW**  
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**Odero v Republic (Criminal Appeal 170 of 2017)  
[2023] KECA 1256 (KLR) (6 October 2023) (Judgment)**

Neutral citation: [2023] KECA 1256 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPEAL 170 OF 2017  
PO KIAGE, F TUIYOTT & JM NGUGI, JJA  
OCTOBER 6, 2023**

**BETWEEN**

**PAUL OCHIENG ODERO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An appeal from the Judgment of the High Court of Kenya at Homabay  
(Majanja, J.) dated 31st July, 2014 in HCCR Case No. 45 of 2013)*

**JUDGMENT**

1. In this appeal, the appellant, Paul Ochieng Odero raises a single complaint against the decision of the High Court at Homabay (E Maina) delivered by Majanja, J on July 31, 2014. By that decision, the court found the appellant guilty of the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). Consequently, the appellant was sentenced to death.
2. The appellant does not contest conviction. His sole complaint in the memorandum of appeal dated June 30, 2023, is as that;  

The learned judge erred in law condemning the appellant to a sentence that was harsh and manifestly excessive under the circumstances.'
3. In arguments before us, the appellant's learned counsel, Ms Olonyi submitted that the learned judge overlooked material facts in sentencing the appellant. She contended that the appellant acted in anger when he was informed that the deceased was having an affair with his wife. Counsel argued that the murder was not premeditated as the appellant and the deceased were friends who sang in the same church choir. Ms Olonyi proposed that the sentence imposed should be reduced to a term sentence of 10 years.



4. In reply to those submissions, Mr Okango, the learned Senior Principal Prosecution Counsel asserted that the question of the murder not being intentional was inapplicable, the appellant having been convicted of murder. There was also no evidence of provocation, counsel added. Mr Okango conceded the mandatory death sentence imposed is no longer considered constitutional, urging however that, the appellant never expressed any remorse and he should therefore serve a term sentence of 30 years.
5. We agree with the learned prosecution counsel that the defense of provocation was not supported by the evidence on record and neither was this a crime of passion. It is apparent that the murder of the deceased was deliberately and carefully planned. From our own perusal of the record, we concur with the observations and finding of the learned judge in this regard;
  - '21. [...] Evidence on record, which evidence is uncontroverted, is that it was the accused who went for the deceased at the juggery where he was working. The two of them went to the house of the accused where this incident occurred. They went away chatting. According to the prosecution witnesses they were best of friends. They attended the same church and sang in the choir together. Nobody knows what happened at the accused's house but shortly afterwards a commotion was heard behind the accused's house. The two witnesses to the incident say they saw the accused stab the deceased with a spear. The accused was bleeding and was staggering towards the road. The post mortem report shows that he had multiple stab wounds on the head, the neck, the shoulders the anterior chest wall, the abdomen and the back. There was a large cut wound on the left shoulder and elbow joints. Unlike in the cases cited here there is no evidence that the deceased provoked the accused at all. Instead we have a case of an accused person who calls the deceased from his place of work and leads him to his house where he then brutally attacks him.
6. Clearly the accused was not acting in the heat of passion. Even granted that the onus to disprove self-defence and provocation lies on the prosecution...'
7. In the end, we think that the aggravating circumstances in the case far outweigh the mitigation made on the appellant's behalf that, he was a married man with a wife and five children. He acted towards his friend worse than the worst of the enemies, wantonly and violently depriving him of life. He may be spared the death sentence but deserves a stiff term sentence.
8. In the result, this appeal partly succeeds to the extent that, we set aside the sentence of death and substitute therefor with a term of twenty-five (25) years imprisonment to run from the date the appellant was first sentenced.

**DATED AND DELIVERED AT KISUMU THIS 6<sup>TH</sup> DAY OCTOBER, 2023.**

**P. O. KIAGE**

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**JUDGE OF APPEAL**

**F. TUIYOTT**

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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**

