



**Oure v Republic (Criminal Appeal 295 of 2018)
[2023] KECA 1155 (KLR) (3 October 2023) (Judgment)**

Neutral citation: [2023] KECA 1155 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 295 OF 2018
HM OKWENGU, HA OMONDI & JM NGUGI, JJA
OCTOBER 3, 2023**

BETWEEN

JEREMIAH MIRUKA OURE APPELLANT

AND

REPUBLIC RESPONDENT

*((Being an appeal from the Judgment/Decree of the Hon J.R. Karanja
(J), delivered on 9th February 2017 in Kisii HCRA No 7 of 2015))*

JUDGMENT

1. The appellant, Jeremiah Miruka Oure, was tried and convicted by the High Court (Karanja, J) of the offence of murder contrary section 203 as read with section 204 of the Penal Code. He was convicted and sentenced to death.
2. Aggrieved with the judgment of the High Court, the appellant preferred the present appeal in which he filed a memorandum of appeal dated December 13, 2019 raising one single ground which we reproduce verbatim as follows:

“The appellant is fully seeking refuge in the provisions of article 165(3)(a)(b), 159(2)(a)(b) and 22(4) of the constitution of Kenya, 2010 bearing in mind the Supreme Court decision in Francis Karioko Muruatetu & anor vs Republic [2017] eKLR. (Muruatetu decision)”

3. In effect, therefore, the appeal before us is against sentence only.

The appellant has filed Written Submissions in which he urges that he is remorseful and has learned to be a good citizen. He urges the Court that the death sentence be set aside and substituted with a sentence of 5 years imprisonment.



4. Learned Counsel Mr Okango who appeared for the Director of Public Prosecutions(DPP), for the respondent, has filed Written Submissions in which he argues that the constitutional provisions relied upon by the appellant that is, article 165(3)(a) and (b), article 22(4) and article 159(2)(a)(b) are not relevant to the appellant's appeal. Nonetheless, Mr Okango concedes on authority of the jurisprudence laid by the Supreme Court in the Muruatetu decision that the mandatory death sentence provided under section 204 of the *Penal Code* is unconstitutional. On that basis, Mr Okango concedes to the appellant's plea to have the death sentence set aside and the appellant resentenced.
5. Mr Okango urges that given the circumstances in which the offence was committed, the appellant having shot the deceased with an arrow at close range without any provocation and the malice aforethought evident from the appellant's statement that he would kill somebody, he deserves a severe penalty for his action. Mr Okango submits that a prison term of 30 years would serve this purpose.
6. From the evidence that was established before the trial court, the appellant suddenly and without any provocation accosted the deceased, shot him with an arrow on the chest and then fled.
7. In his defence, the appellant blamed the deceased for mobilizing a group of people to evict him from his land. He contended that he did not intend to kill the deceased but was only protecting himself. The learned Judge found that there was no such provocation.
8. We have considered the mitigation of the appellant before the trial court, and do sympathise with his young family. Nevertheless. the appellant caused the deceased's death needlessly and without any provocation, and the deceased's family are now left without their father. In the circumstances, we agree with Mr Okango that a deterrent sentence is necessary.
9. In our view, a term of 20 years imprisonment would be fair and just in the circumstances in which the offence was committed. Consequently, we allow the appeal in regard to sentence to the extent of setting aside the sentence of the trial court and substituting thereto a sentence of 20 years imprisonment with effect from February 9, 2017, the date of judgment of the trial court.
10. Those shall be the orders of the court.

DATED AND DELIVERED AT KISUMU THIS 3RD DAY OF OCTOBER, 2023.

HANNAH OKWENGU

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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

