



REPUBLIC OF KENYA



**KENYA LAW**  
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**Okeno & another v Republic (Criminal Appeal 41 of 2014)  
[2022] KECA 559 (KLR) (10 June 2022) (Judgment)**

Neutral citation: [2022] KECA 559 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAKURU  
CRIMINAL APPEAL 41 OF 2014  
DK MUSINGA, K M'INOTI & S OLE KANTAI, JJA  
JUNE 10, 2022**

**BETWEEN**

**DAVID SILALE OKENO ..... 1<sup>ST</sup> APPELLANT**

**FRANCIS OYIE LOMAN ..... 2<sup>ND</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(This was an appeal from the Judgment of the High Court of Kenya at Nakuru (Emukule, J.) dated 13th June 2014 in HC. CR.C. No. 50 of 2008)*

**JUDGMENT**

1. This is a first appeal from the judgment of the High Court of Kenya at Nakuru. The two appellants, David Silale Okeria and Francis Oyie Lemori, were charged before that court with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*, particulars being that on 23<sup>rd</sup> March, 2008 at Kotorongot village in the then Koibatek District they jointly murdered Robert Ouko Oliech, hereinafter referred to as the deceased. The prosecution called 8 witnesses in support of its case, the appellants defended themselves, and in a judgment delivered by Anyara Emukule, J. on 13<sup>th</sup> June, 2014 the appellants were convicted and sentenced in a ruling dated 10<sup>th</sup> October, 2014 to serve 30 years' imprisonment from the date of their arrest and detention.
2. Although we are required in a first appeal like this one to re-evaluate the evidence and come to our own conclusions of facts (*Okeno v Republic* [1972] EA 32), always remembering that we do not have the benefit of seeing or hearing the witnesses an advantage the trial Judge had, we may not have to dwell much into that because of the position the appellants have taken in this appeal.
3. In similar Memoranda of Appeal, the appellants state that they did not plead guilty at the trial and in ground 2 it says: "Grounds of Mitigation (see overleaf)." Those grounds of mitigation are also



similar, word for word. The appellants in sum say that they were first offenders who are remorseful and rehabilitated after spending time in custody; that they have learnt through pain that crime does not pay; that they are young unmarried men; that they were drunk during commission of the offence and suffered temporary insanity. For all that they pray that the appeal be allowed, their convictions be quashed and the sentences be reduced.

4. When the appeal came up for hearing before us on a virtual platform on 7<sup>th</sup> March, 2022, both appellants were present while the office of Director of Public Prosecutions was represented by learned State Counsel, Miss Chelangat. Both appellants repeated what we have set out above grounds of appeal – that they have reformed; they have stayed long in prison, and that the sentence imposed be reduced.
5. In her written submissions, Miss Chelangat stated that no issues of law or fact were raised in the mitigation offered by the appellants.
6. The prosecution evidence established that the appellants armed themselves with a knife and a somali sword. They boasted to PW2 (Dickson Nyakal) that they would kill someone that day. They proceeded to carry out their threat – they fought the deceased, stabbing him with the said weapons. Doctor John Ombega (PW6) testified that on examining the body of the deceased he found a stab wound on the lower right hand rib which exited between the 6<sup>th</sup> and 7<sup>th</sup> rib. It measured 2.5 cm and was about 1.0 cm wide. The chest had a lot of blood and there was a cut wound on the left cheek. The cause of death was established to be excessive bleeding following the stab wound. The doctor further testified that both appellants were examined and found to be fit to stand trial.
7. The trial Judge considered the defence of intoxication and found that the appellants were not intoxicated. The Judge found that there was a deliberate decision to go out and kill the deceased and after doing so the appellants went back and confirmed to PW2 what they had done. The Judge found that the defence of intoxication as defined by Section 207 of the Penal Code was not available to the appellants.
8. We have considered the record and we too, like the trial Judge, have reached the same conclusion. The appellants armed themselves with dangerous weapons and they deliberately attacked the deceased inflicting fatal injuries on him. They have admitted in this appeal that they did so and they are asking to be forgiven for those acts.
9. The appellants were sentenced to 30 years imprisonment for an offence which Section 204 of the Penal Code prescribed the death sentence. In their mitigation before the Judge the appellants said that they were remorseful; that they were young and had been in custody for long. The Judge considered those factors and applied the principles in Articles 23 and 26 of the Constitution of Kenya, 2010 on right to life and an interpretation of the Constitution that enhances rather than detracts from those rights. The Judge found that a life had been lost senselessly and reached the conclusion that we have seen.
10. We cannot see any reason in law to interfere with those conclusions. This appeal has no merit, and we dismiss it accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 10TH DAY OF JUNE, 2022.**

**D.K. MUSINGA, (P)**

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**JUDGE OF APPEAL**

**K. M'INOTI**

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**JUDGE OF APPEAL**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original.

Signed

**DEPUTY REGISTRAR**

