



**Republic v Otieno (Criminal Case E033 of 2022)
[2025] KEHC 1531 (KLR) (28 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1531 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL CASE E033 OF 2022
DK KEMEL, J
FEBRUARY 28, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

STEPHEN OCHIENG OTIENO ACCUSED

SENTENCE

1. The accused herein Stephen Ochieng Otieno has been charged with an offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#). Vide the judgment of this court dated 7th day of February 2025, the accused was found guilty and convicted accordingly.
2. Sentencing hearing took place on 24/2/2025. Mr. Were, learned counsel for the defence submitted inter alia; that accused is twenty (20) years and remorseful; that he is an orphan having lost his parents at an early age; that prior to his arrest, he was living with his grandmother; that his grandmother relied on the accused for support; that the accused prays for leniency and that a lenient sentence be imposed to enable him go back home and take care of his grandmother and that the accused has been in custody throughout his trial.
3. Mr. Soita for prosecution submitted inter alia; that the court should balance the scales of justice for the benefit of the family of the deceased. Learned counsel left the court to decide an appropriate sentence to be imposed.
4. This court called for a pre-sentence report by the probation department. The same is dated 22nd February, 2025. The same indicates inter alia; that the accused comes from a humble upbringing; that the accused has not fully enjoyed parenthood at his young age as his father died when he was four (4) years while his mother died while at the age of twelve (12) years; that after the demise of his mother, his aunt took him in and he attended school upto class four; that the accused returned home to stay with his grandmother but did not continue with schooling as he had lost interest as a result of missing



classes; that the accused is a first time offender; that he is a quick tempered and violent person; that he has engaged in fights with peers; that his father and uncle were violent and were also engaged in violent criminal activities; that the deceased and the offender had long standing differences; that in the past, the deceased had cut him on the head; that on the fateful day while both the deceased and offender were dancing at disco matanga in Siriwo village, the deceased again violently struck him with a whip; that the accused fled for cover; that apparently the deceased with his accomplice followed the accused to his hideout both armed with panga; tactfully the offender snatched the panga from the deceased's friend and struck the deceased, who was charging towards him, on the head; that the accused threw the panga back to deceased's friend and fled away; that the accused was arrested by a member of public who handed him to the assistant chief; that since the offender was a short tempered person, he was infuriated by the continuous bullying and attempts on his life; that the accused felt that his life was threatened by the deceased who was charging towards him with a panga and therefore he acted fast by snatching a panga from another person and striking the deceased before he could; that his relatives viewed the period the accused has spent in custody as enough punishment; that the relative support the option of supervised non-custodial sentence which will allow the offender to integrate back in the community and to provide help to his ailing grandmother.

The pre-sentence report further submitted that the offender is remorseful and willing to engage in reconciliation and rehabilitation; that the community is still worried that in case the offender is released on non-custodial sentence, he might destabilize the security of the community and might lead to mob justice on him by the members of the community. It was the view of the probation officer that the home environment is not supportive of a supervised non-custodial sentence for the accused/offender herein.

5. I have considered the mitigating submissions by both learned counsels for the parties herein. I have also considered the pre-sentence report filed by the probation department. Under Section 204 of the *Penal Code*, the punishment for murder is a sentence of death. However, following the decision of the Supreme Court in *Francis Karioko Muruatetu & 2 Others* [2017] eKLR, the mandatory nature of death sentence was declared as unconstitutional and that the courts should receive mitigating circumstances from the offender before imposing an appropriate sentence thereafter and that the courts could as well impose a sentence of death if the circumstances warrant it.
6. From the post mortem report dated 21/12/2022 produced by Dr. Patricia Chacha (PW6) of Yala Sub County Hospital, as exhibit 2 and which was done approximately a week after death showed that the body had bruises on the shoulder and a 6X6 cm deep cut wound on the forehead, skull fracture, deep cut wound on left hemisphere. That the cause of death was severe brain injury secondary to deep cut wound by a sharp object.
7. As regards the sentence to be imposed, the Court of Appeal in the case of *Charo Ngumbao Gugudu v R* [2011] eKLR, held as follows:

“Further, the law is that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is thus not proper exercise for the court to fail to look at the facts and circumstances of the case in their entirety before settling for any given sentence. See *Ambani v R* [1990] eKLR.”
8. It is noted that the accused has was in custody during his trial and thus such period must be considered in line with the dictates of section 333(2) of the *Criminal Procedure Code*. I find the circumstances of the case and the pre-sentence report indicate that the family of the accused are in support of supervised non-custodial sentence while the community and administration warn against his release as it might destabilize the security of the community and cause mob justice against the accused. It was the view of the probation officer that the home environment is still hostile and that the same is not supportive



of a supervised non- custodial sentence. It has transpired from the evidence tendered during the trial and at the pre-sentence stage that the accused had a difficult and tumultuous childhood after losing both his parents at a young age and that he started truancy quite early and later evolved into a very violent individual with a quick temper. Had the accused controlled his temper and resorted to other channels of redress, then the deceased would be alive today. The deceased thus lost his precious life thanks to the accused's ungovernable anger. It is note that the accused is at a young and prime age which requires proper and thorough rehabilitation so as to change him into a better individual and whose energies should be used for his own good and the good of the society. I find that the custodial rehabilitation will benefit the accused herein before he can be allowed to rejoin the community. The custodial rehabilitation will help to mould him to be a better person before being released back to the society.

9. In the result, I order the accused herein Stephen Ochieng Otieno to serve a sentence of twenty (20) years' imprisonment which shall commence from the date of arrest namely 11th December, 2022.

DATED AND DELIVERED AT SIAYA THIS 28TH DAY OF FEBRUARY, 2025

D. KEMEI

JUDGE

In the presence of:

Stephen Ochieng Otieno Accused

Were for Accused

Soita for Prosecution

Ogendo Court Assistant

