



**Republic v Ongoro & 2 others (Criminal Case E020 of 2023)
[2025] KEHC 11734 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11734 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E020 OF 2023
WM MUSYOKA, J
JULY 31, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

KEVIN ONGORO 1ST ACCUSED

JOSEPH ONGORO WANJALA 2ND ACCUSED

SEMI ONDUODO 3RD ACCUSED

RULING

1. On 4th July 2025, I delivered a judgement herein, where I convicted the 1st and 2nd accused persons of murder. In that judgement, I directed the County Director of Probation and Aftercare Services to investigate the antecedents of the accused persons, and to carry out interviews on members of the community and the family of the victim.
2. That was done, for 2 pre-sentence reports were placed on record herein, both dated 14th July 2025. They are not favourable of the accused, especially the 2nd accused. The 2nd accused person comes out as a troublesome and aggressive person, who is at the centre of numerous land disputes with neighbours. Both he and the 1st accused did not express remorse, for they continued to deny the offences, despite the conviction.
3. I conducted a sentence hearing on 21st July 2025. Mr. Ouma, for the accused persons, described them as remorseful. I was invited to consider the youthful age of the 1st accused and the old age of the 2nd accused. Ms. Mutella urged me to consider the aggravating circumstances of the killing. It was not accidental or spontaneous, but intentional, deliberate and calculated.
4. The offence, for which the accused were convicted, is murder. It is still a capital offence, attracting a death sentence. However, the sentence of death is no longer mandatory, following Francis Karioko



Muruatetu & another vs. Republic [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ). The court has discretion to award the prescribed death sentence, or to consider alternatives. The growth in human rights jurisprudence, especially around the death penalty, militates against the death sentence. It should be of consideration only in very bad cases. The alternatives are imprisonment and non-custodial measures. For an offence as serious as murder, where a life was lost, non-custodial measures are usually considered inappropriate. There should be a removal from the community as a preventive measure, and as a punishment. Using a convict as a lesson is frowned upon, but it is still effective, for it puts fear into some. For the purpose of this case, I shall refrain from the death sentence and non-custodial measures, which shall leave me with imprisonment.

5. The 1st accused is a young man in his early 20s. It was by his hand that the deceased died. The 1st accused had no issues with the deceased as such, but he hit him with a panga, given to him by the 2nd accused, his father, who told him to hit the deceased with it. He did exactly that. There is the element of youth and being overly obedient to a parent. However, at 22 or 23, the 1st accused was also old enough to know what was right and what was wrong, what he could obey, from his father, and what he could resist. However, I cannot ignore the hold that some parents have on their children. The manner the 1st accused acted, thwacking the deceased on the head with a panga in the way one hits a wild animal, suggests thoughtlessness. There was no justification at all. I note, though, that the social worker has not pointed out any negative aspect on the part of the 1st accused.
6. The 2nd accused appears to have been the principal herein. It was who was disputing with the deceased over land. It was him who came around with the panga that was used to assault the deceased. It was him who handed over the panga to the 1st accused and directed or about or instructed him to cut the deceased, and the 1st accused acted as instructed. Although the 2nd accused did not physically wield the panga, he is the one who ordered the 1st accused to do cut the deceased with it. I am persuaded that without his action, the 1st accused would not have acted. The 2nd accused bears a greater responsibility for what happened. He appears to have had intense influence or control over the 1st accused, and, as an older adult, at age 60 something, he should have known better than to instruct a youngster of the age of the 1st accused to do what he did. The report depicts him as an individual who is a troublemaker in his community, which would desire a deterrent sentence.
7. Although it was expressed that the accused persons were remorseful, the 2 reports by the social workers say otherwise.
8. Upon taking everything into account, I shall, as I hereby do, sentence the 2 accused persons to custodial treatment, for deterrence, and possible treatment, by way of rehabilitation. I hereby sentence the 1st accused to 25 years imprisonment, and the 2nd accused to 30 years imprisonment. There is a right of appeal, of 14 days, from the date hereof. Orders accordingly.

DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA, ON THIS 31ST DAY OF JULY 2025.

WM MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Ms. Mutella, instructed by the Director of Public Prosecutions, for the Republic.

Mr. Otieno, instructed by BM Ouma & Company, Advocates for the accused persons.=

