



**Republic v Oguna alias Uli (Criminal Case E001 of 2022)
[2024] KEHC 619 (KLR) (31 January 2024) (Sentence)**

Neutral citation: [2024] KEHC 619 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL CASE E001 OF 2022
JN KAMAU, J
JANUARY 31, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

GEORGE OTIENO OGUNA ALIAS ULI ACCUSED

SENTENCE

1. The Judgment herein was delivered by Hon Justice Musyoka on 21st July 2023. The Accused person herein George Otieno Oguna alias Uli, was found guilty of the offence of the murder of Abraham Ongute contrary to Section 203 of the *Penal Code* as read with Section 204 thereof, and was convicted accordingly to Section 322 of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
2. He directed that the file to be sent to Vihiga High Court and Probation Office to file a Pre-Sentence Report. The Pre-Sentence Report by Benard Musitia, Probation Officer, Vihiga County was dated and filed on 25th January 2024.
3. In his mitigation, the Accused person told this court that he was a first time offender and that during the period he had been in custody from 22nd January 2022, he had examined himself and was a changed man. He prayed for leniency.
4. On its part, the Prosecution asked this court to consider the Pre-Sentence Report in determining the sentence that it would mete out to the Accused person herein.
5. According to the aforesaid Pre-Sentence Report, the Accused person was aged thirty seven (37) years. He pursued formal education up to class six (6) where he dropped out and moved to Londiani to work as casual labourer. He later trained masonry through apprenticeship in Nairobi and thereafter worked in construction sites. He was married and blessed with three (3) children. He was of good health and was engaging in alcohol consumption before his arrest.



6. The secondary victim blamed the Accused person's alcoholism and anger issues to the criminal act.
7. The Accused person informed the Probation Officer that he did not intend to kill the village elder and that he only acted in self-defense. He prayed for a non-custodial sentence to enable him take care of his family. He was willing to abide by the rules of the community if granted a non-custodial sentence.
8. His father was resentful and blamed the offence committed by his son as the cause of his predicament as he was attacked and excommunicated from the community after his son committed the offence. On the other hand, his wife vouched for him being granted a non-custodial sentence so that he could support the family. She added that he was a supportive husband and had no previous criminal records.
9. The victim's family was traumatised about the manner in which their loved one died. They noted that they were stressed over the loss of a husband, brother and father. They pointed out that the deceased was the bread winner of his family and his children were thrown out of balance following the sudden demise of their father.
10. They asserted that the heinous act of the Accused person left them harbouring hate and anger towards him in addition to irreparably severing relationships between the two (2) families.
11. The community also viewed him as a very violent person who had a penchant for creating disturbance of peace. According to the Chief and the Assistant Chief of his area, the Accused person was an aggressive and violent person who was a threat to the public especially under the influence of drugs and alcohol. They noted that there was fear of him inflicting more harm to the members of the community thus his safety if released was not guaranteed.
12. Notably, sentencing is one of the most intricate aspects of trial. Indeed, a trial does not end unless a sentence has been meted out. The principle of sentencing is fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing are retribution, incapacitation, deterrence, rehabilitation and reparation. The *Sentencing Policy Guidelines* in Kenya have added community protection and denunciation as sentencing objectives. The objectives are not mutually exclusive and can overlap.
13. This court looked at the Post-mortem Report and noted that the cause of the deceased's death was severe head and chest injuries secondary to blunt force trauma following assault. Though in his defense, the Accused person indicated that there was an altercation between him and the deceased, the Prosecution's evidence was that he attacked the deceased who was a village elder who had gone to arrest him in his house on allegations of stealing maize from his neighbor's land with a metal rod.
14. The nature of the injuries the deceased sustained showed the malice that the Accused person had and showed his intention of killing him. According to the Pre-sentence Report, he did not appear remorseful but was emphatic that he only acted in self-defense. Although he was a first time offender with no previous records, in view of the negative Pre-Sentence Report, the Probation Officer did not recommend a non-custodial sentence.
15. Killing someone is an abomination in the society and that explains why the Accused person's family and community did not want him released on a non-custodial sentence. His father had also been excommunicated from the community while the victim's family lost their loved one prematurely and in an unjust and unwarranted manner. Justice not only needed to be done but it had to be seen to be done.
16. It was also important that the sentence communicate to the community, condemnation of his criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence. The sentence also had to be one that was hinged on retributive justice for the secondary victims.



17. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing him, chances of the Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
18. After serving the aforesaid sentence, the offender may rejoin society as a reformed person capable of re-intergration into the society, and yet he will have learnt his lesson and the justice system will have taught others by him.
19. Having considered the facts of this case and the Accused person's mitigation and weighed against the death sentence for the offence of murder prescribed under Section 204 of the *Penal Code*, this court came to the firm conclusion that a sentence of eighteen (18) years imprisonment would be suitable and adequate herein.

Disposition

20. Accordingly, for the reasons set out above, the Court having in its judgment convicted the offender for the offence of murder contrary to Section 203 as read with 204 of the *Penal Code*, it is hereby directed that the Accused person be and is hereby sentenced to eighteen (18) years imprisonment to run from today.
21. The period he spent from when he was arraigned in court on 6th January 2022 until 30th January 2024 be and is hereby taken into account while computing his sentence in line with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).
22. Orders accordingly.

DATED AND DELIVERED AT VIHIGA THIS 31ST DAY OF JANUARY 2024

J. KAMAU

JUDGE

