



State v Abok (Criminal Case 36 of 2014) [2024] KEHC 510 (KLR) (30 January 2024) (Resentence)

Neutral citation: [2024] KEHC 510 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL CASE 36 OF 2014
RE ABURILI, J
JANUARY 30, 2024**

BETWEEN

STATE PROSECUTION

AND

MUSA ABOK ACCUSED

RESENTENCE

1. The accused person herein is Musa Abok. He was tried, convicted and sentenced to death for the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#).
2. He appealed to the Court of Appeal vide Court of Appeal Criminal Appeal No. 197 of 2017 which appeal was heard on merit and determined on 22nd September 2023. The Court of Appeal dismissed the appeal against conviction but allowed the appeal against sentence and directed that the accused person herein do appear before this court, being the trial court, for resentencing in line with the Principles and Guidelines set out in the [Francis Karioko Muruatetu & Another v Republic](#) [2017] eKLR.
3. The deceased victim of the murder is/was Kenneth Jared Odhiambo Abuto. He was assaulted and succumbed to the injuries on 27th March 2013. The accused person cut the deceased on the forehead, the knee among other injuries enumerated in the postmortem report dated 11th April 2014 done by Dr. Mchana who concluded that the cause of death was raised intra-cranial pressure secondary to penetrating blunt force trauma to the head (assault).
4. In his defence, the accused raised an alibi defence, which the court dismissed and rightly so.
5. Having exhausted his right of appeal, the accused is now here for resentencing.
6. He mitigated through his counsel Mr. Onsongo Advocate who submitted that he was 48 years, is remorseful and prayed for discretion of the court. He prayed for light non-custodial sentence. That he has been in custody since being sentenced on 26th July 2017 although he was on bond pending trial.



7. That he dropped out of school in class 3, is a trained welder without formal training, he is married to four wives and together they have ten children and that he was their sole breadwinner. That he also supports his aged parents. That two of his wives left due to lack of support and that he wants to bring them back. that due to his incarceration, some of his children dropped out of school and that while serving jail, he has reformed and attended several spiritual programs and obtained certificates. He regrets the loss of life and seeks forgiveness and leniency of the court.
8. Both counsel asked for a presentence report which has been filed this morning.
9. The report reveals that the accused has no identity card but says he is aged 42 years. He is a first offender and his relationship with the community and family is cordial.
10. He readily admits that he committed the offence following boundary disputes and verbal abuse by the victim.
11. The victim was 42 years old, married with three children. Two are in Secondary school. He was a casual labourer with Jumbo Mattress. His family members were psychologically affected by his death. They are still aggrieved. The accused person's family welcomes review of sentence considering the period of 6 years spent in custody.
12. I have considered the mitigation, the Pre-Sentence Report and the recommendation letter dated 8th March 2022 from Kisumu Maximum Prison to the effect that the convict has undergone several rehabilitation programs and that they have had a positive impact on his life.
13. That given an opportunity to leave prison, he will live a meaningful productive life.
14. I have also considered the circumstances under which the offence committed and the resentencing guidelines espoused in the *Francis Karioko Muruatetu & Another v Republic* (2017) eKLR case and the directions given in the *Muruatetu II case*.
15. I have given equal consideration to the purposes and objects of sentencing which is spelt out in the *Judiciary Sentencing Policy Guidelines*.
16. The accused person unlawfully killed his neighbour with malice aforethought. He denied the offence but the courts have confirmed his guilt. He now pleads for leniency and has been in prison for 6 years. He has a large family that wholly depended on him.
17. The deceased too had a family that depended on him and who have been left mourning for life. His children too are suffering due to the death of their father.
18. Considering the above, and especially the fact that the accused has reformed and is a first offender who is now ready to live a meaningful life of heavy responsibilities to third parties, I hereby exercise discretion and resentence the convict herein Musa Abok alias Moses Abok Auma to serve ten (10) years imprisonment to be calculated from the date of his conviction on 26th July 2017. Accordingly, the death sentence imposed on the convict herein is hereby set aside and substituted with ten (10) years imprisonment.
19. Signal and fresh warrant of commitment to issue.
20. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 30TH DAY OF JANUARY, 2024

R.E. ABURILI

JUDGE

