



**Odiko v Republic (Criminal Appeal E023 of 2022)  
[2024] KEHC 4367 (KLR) (25 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4367 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT HOMA BAY  
CRIMINAL APPEAL E023 OF 2022**

**KW KIARIE, J**

**APRIL 25, 2024**

**BETWEEN**

**FRANCIS OYAMO ODIKO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Criminal case No.434 of 2022 of the Senior Principal Magistrate's Court at Oyugis by Hon. C.A. Okore– Principal Magistrate)*

**JUDGMENT**

1. Francis Oyamo Odiko, the appellant herein, was convicted after pleading guilty to the offence of robbery with violence contrary to section 295 as read with section 296 (2) of the Penal Code.
2. The particulars were that on the 10<sup>th</sup> day of June 2022, at Karoko village, Kasewe location, in Rachuonyo East sub-county of Homa Bay County, jointly with others not before the court while armed with clubs, robbed Ludia Auma Molo of cash Kshs. 85,000.00, and other assorted items, all valued at Kshs. 124,000.00 and at or immediately after the time of the said robbery, used actual violence against the said Ludia Auma Molo, killing her.
3. The appellant was convicted and sentenced to forty-nine years imprisonment. He was aggrieved and filed this appeal.
4. The appellant was in person and raised the following grounds of appeal:
  - a. That the sentence of 49 years imprisonment imposed against the appellant is harsh and excessive, requesting this Hon. Court to set aside the 49 years imprisonment and reduce it to a lesser sentence.
  - b. That the court allows the appeal on sentence reduction.



- c. The court considers the mitigation factors part of sentence reduction.
  - d. The court should consider section 333(2) of the Criminal Procedure Code to reduce the sentence by considering the period spent in custody.
5. The state opposed the appeal. It was contended that the sentence was appropriate.
  6. This is a first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court. I have concluded, considering I neither saw nor heard any witnesses. I will be guided by the celebrated case of Okeno vs Republic [1972] EA 32.
  7. Section 296 (2) of the Penal Code provides:

If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.
  8. An appellate court would interfere with the trial court's sentence only where there exists, to a sufficient extent, circumstances entitling it to vary the trial court's order. These circumstances were well illustrated in the case of Nillson vs Republic [1970] E.A. 599, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in James Vs. Rex (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R Vs. Shershewcity (1912) C.CA 28 T.LR 364.
  9. No sufficient reasons have been adduced to show that the learned trial magistrate acted upon some wrong principle or overlooked some material factor. In addition, the victim of the robbery, in this case, died.
  10. The prescribed sentence for the offence is mandatory; therefore, the punishment meted out was illegal. However, since the prosecution did not seek and issue the requisite notice for enhancement, I will not interfere with it.
  11. The appeal is therefore dismissed.

**DELIVERED AND SIGNED AT HOMA BAY THIS 25<sup>TH</sup> DAY OF APRIL 2024**

**KIARIE WAWERU KIARIE**

**JUDGE**

