Republic v Lokutan (Criminal Case E013 of 2021)
[2025] KEHC 3469 (KLR) (10 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3469 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT LODWAR

CRIMINAL CASE E013 OF 2021

RN NYAKUNDI, J

MARCH 10, 2025

BETWEEN

REPUBLIC ..... PROSECUTOR

AND

DAVID ETOOT LOKUTAN ..... ACCUSED

JUDGMENT

1. The accused person was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on 22nd September, 2021 at Alukat village in Turkana Central Sub-Cunty within Turkana County the accused is said to have murdered Simon Ekuom Kapengi.

2. The accused pleaded not guilty to the offence as stipulated under section 203 of the *Penal Code*. The lead prosecution counsel in these proceedings was Mr. Kakoi for the state whereas the defence was under the retainer of Learned counsel Mr. Ekusi duly appointed under article 50 (2) (h) of *the Constitution*.

3. The prosecution summoned 7 witnesses who tendered evidence to prove the following elements of the offence;

    a. The death of the deceased,

    b. The death was unlawfully caused

    c. That in causing death of the deceased accused's unlawfully acts were accompanied with malice aforethought.

    d. That additionally the accused was the person who committed the offence on the material day as against the deceased.

4. A bird's view of the prosecution case goes thus:

5. PW1: Dr. Wa-yaa Jonathan testified that on 7th October, 2021 he carried out a post mortem examination in reference to the body of Simon Ekuom alleged to have been assaulted prior to his death on 23rd September, 2021. In a detailed report PW1 made the following diagnostic on the deceased body as having sustained multiple Linear Abrasions on the Posterior aspect of both legs, the back and chest, Healed abrasions on both knees anteriorly, Extensive scalp hematoma and in the nervous system bilateral subdural haemorrhage. As a result of the examination PW1 opined that the cause of death was severe head injury secondary to bilateral subdural haemorrhage secondary to blunt force trauma to the head.

6. PW2 Rose Narohin Ngipuwo gave evidence to the effect that on 22nd September, 2021 the deceased also happened to be her husband left the house to go and have a drink at Alukot village. In a short while PW2 heard screams emanating from that homestead and on rushing there she demanded money from the deceased to go and buy some food. However, it turned out that the deceased picked a quarrel with her necessitating her to leave that homestead. When he came home they had a quarrel and a fight ensued. In addition, it was the evidence by PW2 that she left for Kerio Center only to receive information from Esther that they had also fought with the deceased. Unfortunately, PW2 did not see her husband alive again. On arrival at home she witnessed the assault of her husband by one Etoot the accused person in this case, and another suspect who is not before court. According to PW2 in consultation with other members of the family one Patrick Nawi who drives a probox motor vehicle was asked to assist in escorting the deceased to Kerio Health Center where he was treated and discharged. The condition of the deceased did not improve and therefore it became necessary to have him referred to Lodwar County Referral Hospital. It was while undergoing treatment, the deceased succumbed to death.

7. PW3 was David Lowalel a member of the National Police Reservist stated in court that on 22nd September, 2022 he went fishing and came back at around 6PM when he saw a number of people around the scene where the deceased had been murdered. In the same scene PW3 was also shown the accused person together with his accomplices armed with two sticks. A report was made to the Police station which commenced investigation to establish culpability of the accused person in committing the offence.

8. PW4 was Esther Lokwasinyen whose evidence was to the effect that on 22nd September, 2021 while travelling back from the hospital to her home she heard some screams of people fighting. This prompted her to rush to the scene and on observation she saw the deceased being taken to his homestead by the assailants where the accused person was one of them according to her positive identification.

9. PW5 evidence came from Navilongori Lochakai to the effect that on 22nd September, 2021 he was telephoned by the wife of the deceased to assist in taking him to the hospital. He fulfilled that role and on arrival at the hospital they were informed that the deceased had already passed away.

10. PW6: Benard Ewoi testified as to the events of 22nd September, 2021 while he was working at Kerio Health Center. During that time a patient was brought in by four people with an history of having been assaulted. The quick physical examination by PW6 upon the body of the deceased he established that he had no pulse and was in a comma. That is what disclosed to the family that the patient is dead.

11. PW7 No. 85030 CPL James Kurgat on instruction from the DCIO he conducted investigations on the murder incident involving the deceased. According to PW7 the investigation revealed that the deceased had been assaulted by his In-laws at Alukat village. He was later to be rushed to Kerio Health Centre

where he was pronounced dead. He recorded statements from witnesses and on visit to the scene he recovered sandals, t-shirt, wooden stick and also took photographs to document the scene. He also participated in the post mortem examination which was done on 12th October of 2021. It was opined by the pathologist that the deceased died as a result of severe head injury. In support of the prosecution case, PW7 produced the following exhibits: A t-shirt, a pair of sandals and sticks. That was the close of the prosecution case and at the end of it all the accused person was placed on his defence. The accused elected to give a sworn statement in which he denied the offence of killing the deceased. He also raised the defence of alibi that he was never at the alleged scene as alleged by the prosecution witnesses.

Analysis & Decision

12. The above evidential material shall form the basis upon which the standard and the burden of proof of beyond reasonable doubt would be tested to establish whether the prosecution has discharged its role to warrant this court to rule in its Favor to secure judgment as stated in such legal instruments under section 107(1), 108 and 109 of the *Evidence Act*. In proving the existence or non-existence of facts in issue by the prosecution is a matter of evidential burden vested with the state at all material times as a right insulated in Art. 50(2)(a) of *the Constitution* on the presumption of innocence unless the contrary is proven.

13. The Black's Law dictionary defines evidence as:

> " Any species of proof of probative matter, legally presented at the trial of an issue by the act of the parties and through the medium of witnesses, records, documents, exhibits, concrete objects etc. for the purposes of inducing belief in the minds of the court or jury as their contention. All the means by which any alleged matter of fact, the truth of which is submitted for investigation is established or disproved. Any matter of fact, the effect, tendency, or design of which is to produce in the mind a persuasion of the existence or non-existence of some matter of fact. That which demonstrates, makes clear, or ascertains the truth of the very fact or point in issue, either on the one side or on the other. That which tends to produce conviction in the mind as to existence of a fact. The means sanctioned by law of ascertaining in a judicial proceeding the truth respecting a question of fact.
>
> Testimony is evidence given by a competent witness under oath or affirmation as distinguished from evidence derived from writings and other sources. Testimony is a particular kind of evidence that comes to a tribunal through live witnesses speaking under oath or affirmation in presence of tribunal, judicial or quasi-judicial."

14. One of the first formulations on the standard and burden of proof of beyond reasonable doubt is traceable to Thomas Starkie in "A Practical treatise of the Law of Evidence" who observed that:

> " What circumstances will amount to proof can never be matter of generation of definition; ..... On the other one hand, absolute, metaphysical and demonstrative certainty to the exclusion of every reasonable doubt: ... On the other hand, a juror ought not to condemn unless the evidence exclude from his mind all reasonable doubt as to the guilt of the accused, and, as has been well observed, unless he be so convinced by the evidence that he would venture to act upon that conviction in matter of the highest concern and importance to his won interest....." see also the principles as illuminated in the cases of Republic versus Nyambura and four other (2001) KLR 355, Sekitoleko v Uganda (1967) EA 531, Msembe & another versus Republic (2003) KLR 521, Mbuthia v Republic (2010) 2 EA 311.

15. In Kioko versus Republic (1983) KLR 289, the court of Appel held that the law does not require the accused to prove his innocence save in a few exceptional cases under Section 111 of the *Evidence Act*. The test remains that of beyond reasonable doubt not of any doubt at all.

16. As stipulated elsewhere in this judgment the four ingredients remain constant in which the prosecution must endeavour to discharge the above burden of prove beyond reasonable doubt. This case is a mixed grill of both direct and circumstantial evidence.

17. First and foremost, the evidence adduced by the prosecution witnesses including the post mortem report by PW1 established beyond reasonable doubt that the deceased Simon Ekuomi Kapengi is dead. The defence never countered by way of evidence to disapprove existence of the fact of death of the deceased. It is trite that prove of death in our criminal justice system is by way of medical evidence or on the other and by cogent circumstance evidence. See Benson Ngunyi Nundu v Republic Nairobi CACRA No. 171 of 1984 and Republic v Cheya and another (1973) EA.

18. The next question is whether the death of Simon Ekuom Kapengi was caused by an unlawful act or omission imitated and executed by the accused as against the deceased. It is the cause of death which exactly links the accused person with the commission of the offence the evidence may be either direct or circumstantial. The court must look for the proximate cause of which gave rise to the termination of the right to life under Art 26 of *the Constitution*, which is not excusable or justified. The court has also to bear in mind the legal ingredients of Section 213 of the *Penal Code* on causation issues and proof on homicide category of offences.

    The death need not be caused by the immediate act of the accused. Section 213 of the *Penal Code* defines causing death to include acts which are not the immediate or sole causes of death. The accused would be held responsible for another person's death although his act is not the immediate or sole cause under the following circumstances:

    a. He inflicts bodily injury on another person and as a consequence of that injury the injured person undergoes a surgery or treatment which causes his death;

    b. He inflicts injury on another which would not have caused death if the injured person had submitted to proper medical or surgical treatment or had proper precautions as to his mode of living;

    c. He by actual or threatened violence causes such other person to perform an act which causes the death of such person, such an act being a means of avoiding such violence which in the circumstances appear natural to the person whose death is so caused.

    d. He by any act hastens the death of person suffering under any disease or injury which apart from such an act or omission would have caused the death; and

    e. His act or omission would not have caused death unless it had been accompanied by an act or omission of the person killed or of other persons.

19. What must be caused in homicide cases to constitute the element of unlawful act is some acceleration death, since everyone must die sooner or later. It follows therefore that every killing is merely an acceleration of death and it makes no difference for this purpose the victim is already suffering from a fatal injury or is under the sentence of death. It is therefore pertinent to state from this passage under Section 213 of the *Penal Code* that causation is the causal relationship between conduct and result. It should be noted that causation only applicable where a result has been achieved and that result is an act or omission which caused the death of the deceased.

On this element, we have the evidence of PW1 Dr. Wayaa who conducted the post mortem report which showed that the deceased had bruises on the back and on both knees. It was opined by PW1 that the deceased suffered severe injuries to the head which was predominantly the main cause of death having been inflicted by a blunt force trauma by a third party. In addition, PW2 gave a narrative on causation issues arising out of the fight initially between one Esther and later the accused person and other conspirators who are not before court. In the same vein, PW3 confirmed as having visited the scene and saw the accused person and others dragging the body of the deceased which lay motionless on the ground. In the same scene PW3 stated in court that the accused person and others were armed with sticks. According to PW4 on the fateful day she also saw the deceased being taken to his homestead by the accused person being part of the people who transported him to his homestead. That is after responding to some screams to the same village. The Investigations carried out by PW7 established circumstantially that the deceased was beaten by known assailants in which one of them is the accused person before court. In answer to this prima facie evidence, the accused raised an alibi defence which was dislodged by the evidence of PW2, PW3, PW4, PW5 and PW6. The manner in which the deceased met his death was unlawful. The wounds sustained during the assault can properly be said be the cause of death. This death in question was not justified or excusable.

20. As regards murder in Section 203 of the *Penal Code*, proof of it as against the accused person being culpable is incomplete without the ingredient of malice aforethought. The definition of Malice aforethought under section 206 of the *Penal Code* which provides:

> " Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances –
>
> a. An intention to cause the death of or to do grievous harm to any person, whether that person is the person actually killed or not;
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> b. Knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether that person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;
>
> c. An intent to commit a felony;
>
> d. An intention by the act or omission to facilitate the flight or escape from custody of any person who had committed or attempted to commit a felony."

21. It is settled law that Malice aforethought can be determined by way of evidence from the prosecution on the type of weapon used, the gravity of multiple injuries inflicted on the deceased, the part of the body on which the injuries were inflicted by the assailant and the conduct of that assailant before, during and after the commission of the offence. There is also a need to establish through direct or circumstantial evidence that the accused person or any other suspect to the offence inflicted the injuries as founded in the medical report to have done so with malice aforethought. Taking into account the testimony of PW1, PW2, PW3, PW4, PW5, PW6 and PW7 the inflicting of injuries on the deceased leading to her death discloses malice aforethought. The manner in which the assailants behaved upon inflicting severe injuries to the head gives rise to one conclusion that the accused and other persons not before court intended to kill or cause harm to the deceased.

22. Malice aforethought in murder is an intention to kill and cause serious injuries to the victim. The concept under Section 206 of the *Penal Code* has been interpreted by courts as embracing in addition

to situations where it is the offender's or accused conscious objective or purpose to kill his/her victim by inflicting multiple injuries which target vulnerable parts of the body. The manifestation or formulation of this element is an evidential issue by the prosecution in which the offender or the accused is shown to have committed the offence recklessly under circumstances which demonstrate extreme indifference to the value of human life guaranteed and protected in Art. 26 of *the Constitution*. As far as this court has been able to make a finding from the evidence submitted, certainly one has to appreciate from the testimony of PW2 who alluded to the fact that of having seen the accused with others not before court inflict the fatal injuries as confirmed by the pathologist PW1. The prosecution also in this respect affirmed the killing of the deceased vide the testimony of PW3 who on the material day happened to have rushed to the scene of the crim when he saw the accused person with two others not before court dragging the body of the deceased towards to their camp. Therefore, it is the finding of this court that malice aforethought could be implied from the surrounding circumstances in which the deceased met his death. Furthermore, from the totality of the evidence from both the prosecution and the defence, this murder was unprovoked as defined in section 207, 208 of the *Penal Code* excluding that benefit in favour of the accused person. There is therefore a rebuttable presumption of intention to kill within the broader concept of malice aforethought that using the standard test of a reasonable man. It means that a man/woman suspected of homicide is usually able to foresee what are the natural consequences of his/her unlawful acts and as such, the court can be reasonable held to have inferred manifestation of malice aforethought. It matters not that the accused in fact contemplated as the probable result of inflicting harm to be some kind of discipline for misconduct or unlawful conduct of the victim. The essence of this conceptual framework is that the law assumes that one has got to be held accountable for his/her actions unless there is evidence that he/she was suffering from mental infirmity so as to diminish the level of responsibility for the crime. This is usually the test in the McNaughton rules. The definition of intention as laid down in Cunliffe v. Goodman (1950) 1 ALL ER 720, 724 is on point and applicable to the facts of this case if the following statement of the court is anything to go by:

> " An intention to my mind connotes a state of affairs which the party intending does more than merely contemplate. It connotes a state of affairs which on the contrary, he decides so far as in him/her lies, to bring about, and which, in point of possibility, he/she has a reasonable prospect of being able to bring about by his/her own unlawful act of volition"

23. From the perspective of the prosecution witnesses, the state of mind of the accused person and others not before court must have been not only that they foresaw that their unlawful acts of omission will occasion death of the deceased but also willed the possible consequences of their conduct. This is deducible from the post mortem report admitted before this court on oath by PW1 who had the advantage of conducting the post mortem examination upon the body of the deceased. In the circumstances of this case, I am satisfied that the prosecution have discharged the burden of proof to bring the facts of this case within the definitional dimension of section 203 of the *Penal Code* and there are no exceptional or compelling reasons for this court to reduce the offence with that of manslaughter under section 202 of the *Penal Code*.

24. Finally, this court has a duty to answer whether the accused person and others not before court were the perpetrators of the offence. This is a threshold issue on positive identification as laid down in the following cases:

> R. v. Turnbull [1976]3 ALL ER 549 Kariuki Njiru & 7 other v Republic Criminal Appeal No. 6 of 2001, Toroke v Republic (1987) KLR 204

25. On the issue of positive identification of the accused as one of the perpetrators, this court has carefully examined the evidence presented. PW2, the deceased's wife, gave direct testimony of witnessing the

assault of her husband by the accused person. Her evidence was corroborated by PW3, a National Police Reservist, who arrived at the scene and identified the accused among those present, armed with sticks, and dragging the deceased's body. Further confirmation came from PW4, who positively identified the accused as one of the persons taking the deceased to his homestead following the assault. The accused's alibi defence claiming he was never at the scene was effectively disproved by these multiple independent witness accounts placing him directly at the crime scene. The multiple, consistent identifications by witnesses who knew the accused, made in daylight conditions without any indication of mistaken identity, provide compelling evidence beyond reasonable doubt that the accused was indeed one of the perpetrators who caused the death of the deceased.

26. For the foregoing reasons, I find the accused guilty of the offence of murder and do convict him as per law established under section 203 and 204 of the *Penal Code*.

Verdict on Sentence

27. The sentence herein is delivered pursuant to the judgment rendered in this matter, wherein the accused was found guilty and convicted of the offence of murder contrary to contrary to section 203 as read with section 204 of the *Penal Code* (Cap 63) Laws of Kenya.

28. The imposition of sentence is an arduous task. Sentencing has been defined as "the judicial determination of a legal sanction to be imposed on a person found guilty of an offence" (Canadian Sentencing Commission 1987: 115 quoted in MJNZ, 1997.). In State v Banda and Others 1991(2) SA 352 (B) at 355A-C Friedman J explained that:

> "The elements of the trial contain an equilibrium and a tension. A court should, when determining sentence, strive to accomplish and arrive at a judicious counterbalance between these elements in order to ensure that one element is not unduly accentuated at the expense of and to the exclusion of the others. This is not merely a formula, nor a judicial incantation, the mere stating whereof satisfies the requirement. What is necessary is that the court shall consider, and try to balance evenly, the nature and circumstances of the offence, the characteristics of the offender and his circumstances and the impact of the crime on the community, its welfare and concerns."

29. To determine the appropriate objective of the sentence and mete out the appropriate sentence, the Supreme Court of Kenya stated in the case of, Francis Karioko Muruatetu & another v Republic [2017] eKLR as follows: -

> "(42) Pursuant to Sections 216 and 329 of the *Criminal Procedure Code*, Chapter 75, Laws of Kenya, mitigation is a part of the trial process. Section 216 provides:
>
> > The Court may, before passing sentence or making an order against an accused person under section 215 receive such evidence as it thinks fit in order to inform itself as to the sentence or order to be passed or made.
>
> Section 329 of the *Criminal Procedure Code* provides:
>
> > The court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.

(43) Therefore, from a reading of these Sections, it is without doubt that the Court ought to take into account the evidence, the nature of the offence and the circumstances of the case in order to arrive at an appropriate sentence. It is not lost on us that these provisions are couched in permissive terms. However, the Court of Appeal has consistently reiterated on the need for noting down mitigating factors. Not only because they might affect the sentence but also for futuristic endeavours such as when the appeal is placed before another body for clemency."

30. In addition, the Supreme Court gave guidelines for the Courts to consider in re-sentencing offenders convicted of the offence of murder as follows:

"(71) As a consequence of this decision, paragraph 6.4-6.7 of the guidelines are no longer applicable. To avoid a lacuna, the following guidelines with regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:

(a) age of the offender;

(b) being a first offender;

(c) whether the offender pleaded guilty;

(d) character and record of the offender;

(e) commission of the offence in response to gender-based violence;

(f) remorsefulness of the offender;

(g) the possibility of reform and social re-adaptation of the offender;

(h) any other factor that the Court considers relevant.

(72) We wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process."

31. In addition, the Court of Appeal in the case of; Agunga & 2 others v Republic (Criminal Appeal 119 of 2016) [2022] KECA 14 (KLR) stated that:

"28. In determining the appropriate sentence, it is incumbent upon us to consider not only the mitigating factors addressed by learned counsel for the appellants in his oral submissions, but also the gravity of the offence, the brutality displayed by the appellants in full view of their neighbors, the traumatic effect of the heartless and fatal assault on the deceased's widow and children, their diminished source of livelihood, and the deceased's children's emotional distress inflicted on them. When all is said and done, the appellants' conduct among men and women of good sense must be deterred. To our mind, a crime of this nature calls for retribution to such reasonable degree as would allow time for healing of those adversely affected by the crime in issue, and for the

appellants' reform in due time. And that is the least we can do in determining the appropriate sentence to be meted on the appellants."

32. Clause 1.2 of the Sentencing Guidelines (2023) lays out the principles underpinning the sentencing process as follows: -

> "i. Proportionality: The sentence meted out must be proportionate to the offending behaviour meaning it must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behaviour is weighted in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender.
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> ii. Equality/Uniformity/Parity/Consistency/Impartiality: The same sentences should be imposed for same offences committed by offenders in similar circumstances.
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> iii. Accountability/Transparency: The reasons behind the determination of sentence should be clearly set out and in accordance to the law and the sentencing principles laid out in these guidelines.
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> iv. Inclusiveness: Both the offender and the victim should participate in and inform the sentencing process.
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> v. Totality of the Sentence: The sentence passed for offenders convicted for multiple counts must be just and proportionate, taking into account the offending behaviour as a whole.
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> vi. Respect for Human Rights and Fundamental Freedoms: The sentences imposed must promote and not undermine human rights and fundamental freedoms. Whilst upholding the dignity of both the offender (and where relevant, the victim), the sentencing regime should contribute to the broader enjoyment of human rights and fundamental freedoms in Kenya. Sentencing impacts on crime control and has a direct correlation to fostering an environment in which human rights and fundamental freedoms are enjoyed.
>
> vii. Enhancing Compliance with Domestic Laws and Recognised International and Regional Standards on Sentencing: Domestic law sets out the sentences that can be imposed for each offence. In addition, those international legal instruments, which have the force of law under Article 2 (6) of *the Constitution* of Kenya, should be applied. There are also international and regional standards and principles on sentencing that, even though not binding, provide important guidance on sentencing.

33. In that recognition of these goals, clause 1.3 of the Sentencing Guidelines (2023), stipulates the objectives of sentencing as follows: -

> "i. Retribution: To punish the offender for his/her criminal conduct in a just manner. It serves to deter future crime. Victims and society might feel satisfied that the criminal justice system is functioning well when they learn that the offender has received an appropriate sentence for their crimes, which raises trust in the criminal justice system.

ii. Deterrence: To deter the offender from committing a similar offence or any other offence in future as well as to discourage the public from committing similar offences. Thus it is divided into two components; individual and general deterrence. Individual deterrence is to dissuade the perpetrator with the objective to inflict a punishment severe enough to deter the offender from engaging in criminal activity. The convict is expected to be discouraged from committing crimes in the future as a result of the sentence. The society is the target of general deterrence. Other people are deterred from committing those offences by the punishment meted out to those who commit them.

iii. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person. It aims at changing the offenders and make it easier for them to reintegrate into society, through a variety of programs and treatments. It focusses on treating the root reasons of criminal behaviour, such as dependency, mental health conditions, or a lack of education. The objective is to give the offender the resources and assistance they need to upon release, become law-abiding citizens.

iv. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs. Any harm done to the victim may be compelled to be repaired or restored by the court. The goal is to put the victim back in his pre-crime status or position. The goal of restoration is to make up for any harm the perpetrator has caused the victim.

v. Restitution deters crime by financially penalizing the offender. It is somewhat like a civil lawsuit damages judgement and occurs when the court directs the offender to compensate the victim for any injury. Restitution may be required in cases of financial loss, property damage, and, in rare cases, mental suffering. It may also take the form of a fine to help defray part of the expense of the criminal investigation and punishment.

vi. Community protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.

vii. Denunciation: To clearly communicate the community's condemnation of the criminal conduct.

viii. Reconciliation: To mend the relationship between the offender, the victim and the community.

ix. Reintegration: To facilitate the re-entry of the offender into the society.

x. Incapacitation's main purpose is to simply keep offenders outside of society so that everyone is safe from their potentially harmful actions. A person convicted of a crime should not be permitted to mingle with the general public if there is no assurance that they will not commit the same crime again. In certain civilizations, punishment takes the form of death sentence or it may entail a sentence of life in jail without the chance of release."

34. Having considered the sentencing principles and objectives outlined above, I shall now turn to the specific circumstances of this case. The court called for the accused's previous records of conviction, if any, and it has been established that the accused has no previous conviction and is a first offender. This fact has been duly considered in determining the appropriate sentence.

35. The court also accorded the parties an opportunity to address it on sentencing. The prosecution submitted that the gravity of the offence warrants a severe sentence.

36. In mitigation, defense counsel urged the court to consider several factors that would warrant leniency. Counsel emphasized that the accused is a first offender with no previous criminal record, which demonstrates that this incident represents an aberration rather than a pattern of criminal behaviour. Further, it was submitted that the accused is relatively young and therefore has significant potential for rehabilitation if given an appropriate sentence that balances punishment with the opportunity for reform.

37. In determining the appropriate sentence, I must balance several competing considerations: the need for retribution to acknowledge the gravity of taking a human life; deterrence to discourage similar acts of violence in the community; the protection of society; and the possibility of rehabilitation of the offender.

38. The court is mindful of the brutal nature of this crime. The evidence presented during trial established that the deceased was subjected to a violent assault targeting his head, which ultimately caused his death due to severe head injury. The medical evidence confirmed bilateral subdural haemorrhage secondary to blunt force trauma to the head, indicating the extreme violence employed in the attack.

39. The involvement of multiple assailants, including the accused, in carrying out this attack demonstrates a troubling disregard for human life. While only the accused is before this court, the evidence suggests a coordinated assault rather than a spontaneous act of violence. This level of premeditation must be considered in sentencing.

40. At the same time, I acknowledge the mitigating factors in this case. The accused is a first offender with no previous criminal record. This suggests that, prior to this incident, he was a law-abiding member of society. Additionally, the accused's age presents the possibility of rehabilitation and eventual reintegration into society as a productive member.

41. The Supreme Court, in the landmark case of Francis Karioko Muruatetu & another v Republic [2017] eKLR, emphasized the importance of judicial discretion in sentencing for murder convictions. Following this guidance, and considering both the aggravating and mitigating factors present in this case, I find that the appropriate sentence must reflect the seriousness of the offence while allowing for the possibility of rehabilitation.

42. Having carefully weighed all these factors, and being mindful of the principles of sentencing outlined in the Sentencing Guidelines (2023), I hereby sentence the accused, David Etoot Lokutan, to twenty-five (25) years imprisonment for the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*.

43. The period that the accused has spent in custody prior to and during the trial shall be taken into account and deducted from the term of imprisonment imposed pursuant to the provisions of section 333(2) of the *Criminal Procedure Code*. I.e. The sentence shall run from November 5, 2021.

44. 14 days right of appeal explained.

45. It is so ordered.

DATED AND SIGNED AT LODWAR THIS 10TH DAY OF MARCH, 2025

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R. NYAKUNDI

JUDGE