

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA COURT
CRIMINAL CASE NO. E130 OF 2021

DIRECTOR OF PUBLIC PROSECUTION.....
REPUBLIC

~VERSUS~

VINCENT SIMIYU OKUMU.....
ACCUSED

SENTENCE

1. The accused person was initially charged with Murder Contrary to section 203 as read with the section 204 of the penal Code.
2. The particulars of the charge are that on 21st day of August,2021 in Shamberere village, Shamberere Sub- Location, in Kakamega North Sub-County within Kakamega County, murdered Betty Shiro Kuranya Wakhungu (the deceased).
3. This court in its judgement dated 13th March 2025 analyzed the prosecution and the defence evidence and witnesses found that the accused person was guilty of the offence of murder contrary to section 203 as read with section 204 of the penal code.
4. The prosecution case was extensively heard by Justice W.M Musyoka on 18th January 2023 for PW1, PW2 &PW3 and on 21st March 2023 Judge Chirchir heard PW4, PW5, PW6, PW7& PW8 and also the defence case. After analyzing the prosecution and also the defence evidence and witnesses Judge Chirchir found that the accused person was guilty of the offence of murder. Mine is to pass the sentence.
5. I have carefully gone through the record I am fully sized with the facts of the case therefore well-grounded to met the sentence I am about to.
6. Section 204 of the Penal Code provides that a person convicted of murder shall be sentenced to death however the mandatory nature of

the death penalty has been outlawed by the Supreme Court in the case of **FRANCIS MURUATETU & ANOTHER v REPUBLIC [2017] eKLR** in which the Court while retaining the death sentence found that its mandatory nature was unconstitutional and for this sentence had this to say: -

"45. To our minds, what Section 204 of the Penal Code is essentially Saying to a convict is that he or she cannot be heard on why, in all the circumstances of his /her case. The death sentence should not be imposed on him or her, or that even if he or she is heard, it is only for the purposes of the record as at that time of mitigation because the court has to impose the death sentence nonetheless, as illustrated by the foregoing court of Appeal decision. Try as we might, we cannot decipher the possible rationale for this provision. We think that a person facing the death sentence is most deserving to be heard in mitigation because of the finality of the sentence".

"46. We are of the view that mitigation is an important, congruent element of a fair trial. The fact that mitigation is not expressly mentioned as a right in the constitution does not deprive it of the necessity and essence in the fair trial process. In any case, the right pertaining to fair trial of an accused pursuant to Article 50 (2) of the Constitution are not exhaustive."

The court therefore proceeded to pronounce itself thus:

"58. We now lay to rest the quagmire that has plagued the court with regard to the mandatory nature of Section 204 of the Penal Code. We do this by determining that any court dealing

with the offence of murder is allowed to exercise judicial discretion by considering any mitigating factors in sentencing an accused person charged and found guilty of that offence. To do otherwise will render a trial, with the resulting sentence under section 204 of the Penal Code, unfair thereby conflicting with article 25(c),28,48 and 50(1) and (2)(g) of the constitution.”

7. In his mitigation, the accused prayed for leniency. He said he was genuinely remorseful for his actions and expressed deep regret over the tragic loss of life. He is of good character, a family man , father of six children, soul provider to the family and a first time offender.
8. A pre-sentence report dated 01.07.2025 was presented to the court. According to the report the accused is pro-social stable, and free from criminal influence. There were no intergenerational patterns of offending or criminogenic vulnerabilities arising from family dysfunction, substance abuse or economic delinquency. Criminogenic needs analysis revealed that the offenders primary risk factors were situational rather than habitual.
9. I have considered the social inquiry report, the accused’s mitigation and also submissions by the state.
10. Under the Judiciary sentencing Policy guidelines, the objectives sentencing are: -
 - i. **Retribution:** To punish the offender for his/her criminal conduct in a just manner.
 - ii. **Deterrence:** To deter the offender from committing a similar Offence subsequently as well as to discourage other people from committing similar offences.
 - iii. **Rehabilitation:** To enable the offender reform from his criminal disposition and become a law abiding person.

- iv. **Restorative Justice:** To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 - v. **Community Protection:** to protect the community by incapacitating the offender.
 - vi. **Denunciation:** To communicate the community's condemnation of the criminal conduct.
11. The Supreme Court in **Francis Karioko Muruatetu & Another vs Republic, Petition No. 15 of 2015**, as a guide in sentencing held that:
- "...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."

11. In considering the appropriate sentence in this case, this court must carefully weigh both aggravating and mitigating factors. The court must balance the accused's personal circumstances, society's interests, and the

nature of the crime including the circumstances of its commission. The accused stabbed the deceased forcefully to the thigh and she bled to death. The medical evidence from the post mortem report reveals that the deceased suffered external excess blood loss from the stab wound.

12. I also note that the accused is a first-time offender with a possibility of reforming and being rehabilitated.

13. The offence of murder carries the death penalty; however, considering both the gravity of the offence and the need to protect society, while still leaving room for the accused person's rehabilitation, I hereby sentence the Accused to thirty (25) years in prison.

14. The sentence to run from the date of this Judgement.

15. In compliance with Section 333(2) of the Criminal Procedure Code, the sentence term shall be less 1 month the time the accused spend in remand during trial (*he was arrested on 21.8.2023 and released on 23.9.2023*) and also 6 months he spend in remand pending the sentencing (*the judgment was read on 13.3.2025 and the sentence was passed on 1.10.2025*)

15. Right of appeal 14 days explained.

**DATED SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA
THIS 1ST DAY OF OCTOBER, 2025.**

**S.N. MBUNGI
JUDGE**

**IN THE PRESCENCE OF;
Applicants' Counsel, absent
C/A: Angong'a
Accused, absent.
Ms Osoro for ODPP present online.**

