

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VIHIGA
CRIMINAL CASE NO 6 OF 2022

REPUBLIC
VERSUS

JOSEPH OMWANGA ASITIBA ALIAS SIDI.....
.....ACCUSED

SENTENCE

1. On 25th June 2025, this court convicted the Accused person herein for the offence of the murder of Beatrice Maua Osea (hereinafter referred to as “the deceased”) contrary to Section 203 as read with Section 204 of the Penal Code thereof under Section 215 of the Criminal Procedure Code Cap 75 (Laws of Kenya).
2. In his mitigation, the Accused person stated that he was aged twenty-eight (28) years. He expressed remorse and regretted the incident. He pointed out that although the Pre-Sentence Report was not favourable, it was only to guide the court and thus urged this court to look at it but make an independent decision. He stated that he was a first offender and thus urged this court to mete out to him a lenient sentence and also to take into account the period that he had spent in custody. He also requested this court to consider meting out to him a non-custodial sentence.
3. On its part, the Prosecution opposed the Accused person’s prayer to be given a non-custodial sentence. It was emphatic that the Pre-Sentence Report was negative against him as the community and the Local Administration had averred that he was a member of a gang that engaged in robbery with violence cases. He was also said

to have a history of molesting women in the village. It urged this court to consider the Post Mortem Report that showed sexual assault on the deceased. It asked this court to mete out a custodial sentence in line with the Sentencing policy of deterrence, to deter the Accused person and other would-be offenders.

4. According to the Pre-sentence Report of J. Sahani, Probation Officer, Vihiga County dated 30th July 2025 and filed on 15th August 2025, the Accused person was twenty-eight (28) years old. He attended Ebuyalu Primary School and Glorious Secondary School in Dandora, Nairobi. His paternal uncle paid his school fees and counselled and guided him until he dropped out of school in Form Two (2) on his own accord. He thereafter engaged in touting for approximately one and a half (1/2) years before returning to his rural home.
5. He denied having committed the offence shifting blame to the deceased's son whom he accused of framing him due to a fall out in a shared business. He pleaded with court to consider the time he had spent in remand since the year 2019, a period he claimed had taught him difficult but valuable lessons. He urged the court to grant him a non-custodial sentence.
6. His family believed that he was wrongly accused. They pleaded for the court's leniency hoping for a non-custodial sentence. They opined that if imprisonment was deemed necessary, the court should consider a reduced sentence, citing his previous good conduct and respectful behavior.

7. The deceased's family was resentful about the death of their kin. They pleaded with court to impose a harsh sentence against the Accused person for causing the death of the deceased.
8. The Local Administration and the community reported that the offender was frequently involved in molesting women in the community and that he was part of a gang that included his brothers and cousins who engaged in highway robberies. They strongly opposed his release due to fears of further criminal activity.
9. The Probation Office found the Accused person's version that he was in a business with the deceased's son not to have been true. It established that that the deceased's son was a trained welder who worked from home, that the Accused person and the deceased's son were never close, that the Accused person was seen following the deceased on her way home and that his clothes that were found at the scene of the incident were positively identified to belong to him. It recommended a custodial sentence as an appropriate sentencing option in the circumstances.
10. 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.

11. It was 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.
12. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of the offence at the time of sentencing them, chances of the Accused person being reintegrated in the society would be next to impossible as there were possibilities of being harmed.
13. After serving a sentence, the offender could rejoin society as a reformed person capable of re-integration into the society. He would have learnt his lesson and others would have learnt through him. Killing someone was an abomination in the society and hence justice not only needed to be done but it had to be seen to be done.
14. This court looked at the Post-Mortem Report dated 5th August 2019 and noted that the deceased died as a result of asphyxia secondary to manual strangulation. There was also evidence of sexual assault.
15. Although the Accused person and his family pleaded for leniency, this court did not find it prudent to grant him a non-custodial sentence due to the nature of the offence. The injuries the deceased sustained showed the malice that the Accused person had and showed his intention of killing her. He not only sexually assaulted the deceased but he also killed her. The deceased must have had a harrowing experience considering that she was an elderly woman

who had been assaulted by a very young man who was like her child or grandchild. The Accused was also reported to having a history of molesting women in the village.

16. Although there was no eye witness, the Accused person's hat and shoe were found at the scene of crime. These items were positively identified by Phenius Atiele Okwayo (hereinafter referred to as "PW 4") and Chrispo Owiso Atieli (hereinafter referred to as "PW 1"). The circumstantial evidence pointed to him as having been the perpetrator of the offence. The Accused person had continued to deny that he committed the offence. This was evidence that he was really not remorseful of what happened to the deceased or he did not acknowledge and/or appreciate the magnitude of the offence that he had committed.

17. Having considered the facts of this case and the Accused person's mitigation and weighed against the death sentence that was prescribed for the offence of murder under Section 204 of the Penal Code, this court came to the firm conclusion that a non-custodial sentence would be unjust as a life was lost in very unfortunate circumstances. Indeed, the Probation Office had found that the Accused person was unsuitable for a non-custodial sentence. It was the considered view that a sentence of twenty-five (25) years imprisonment would be suitable and adequate herein.

18. The offence that the Accused person had been charged with would have attracted a stiffer sentence due to the aggravating circumstances. The sexual assault that was meted out to the

deceased was most humiliating considering the difference between her age and that of the Accused person. However, this court meted out the aforesaid sentence as the Accused person was young and acted out of the folly of his age. He might not have known anything better at the time.

19. Going further, this court was mandated to consider the period the Accused person spent in remand while his trial was on going in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

20. The said Section 333(2) of the Criminal Procedure Code provides that: -

“Subject to the provisions of section 38 of the Penal Code (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody”

(emphasis court).

21. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following

mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

(ix) Time already spent in prison by the convict...”

22. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in **Ahamad Abolfathi Mohammed & Another vs Republic [2018] eKLR.**

23. The Accused person was arrested on 28th July 2019. Although he was granted bond, he did not seem to have posted the same. He was convicted on 25th June 2025 and from that time, he had remained in custody. The time he remained in custody therefore ought to be taken into consideration while computing his sentence.

DISPOSITION

24. Accordingly, having convicted the Accused person of the offence of murder contrary to Section 203 as read with 204 of the Penal Code, he be and is hereby sentenced to twenty-five (25) years imprisonment which will run from today.

25. For the avoidance of doubt, the period the Accused person spent in custody between 28th July 2019 and 5th November 2025 before his sentencing be and his hereby taken into account while computing his sentence in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

26. It is so ordered.

DATED and **DELIVERED** at **VIHIGA** this **6th** day of **November** 2025

J. KAMAU
JUDGE

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