

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. E019 OF 2023

REPUBLIC

PROSECUTION

VERSUS

JOHN OCHIENG OWAMA.....1ST

ACCUSED

FLORENCE ACHING OWAMA.....2ND

ACCUSED

BRIAN ONYANGO OCHIENG.....3RD

ACCUSED

RULING

1. The accused herein **John Ochieng Owama, Florence Achieng Owama** and **Brian Onyango Ochieng** have been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on 18th June 2023 at an unknown time together with others not before court in Gongo village of Koyeyo Sub Location, Central - Alego Location Siaya Sub County within Siaya County unlawfully killed one **Daniel Odhiambo Odongo**. Vide the judgment of this court dated 24/10/2025, the accused were found guilty of the offence of murder under Section 203 as read with Section 204 of the Penal Code and were convicted therefor accordingly.

2. The sentencing hearing proceeded 7/11/2025. Mr. Oduol for the defence submitted inter alia; that the court do consider the pre-sentence report as filed; that the 1st accused is a first offender and a senior member of society who is aged and sickly; that all accused are members of the same family; that the 1st accused is remorseful over the death of the deceased; that the 1st accused be considered for a non-custodial sentence and that the period spent in custody be considered; that the 2nd accused is also remorseful; that a non-custodial sentence be imposed since the pre-sentence report is favourable to him; that the 2nd accused has five children and that her family has broken down as a result of this case and that

she requires a non-custodial sentence; that the 3rd accused is a young man and remorseful for the offence.

3. M/s Kerubo for the prosecution submitted inter alia; that despite the fact that the accused are first offenders, a precious life was lost; that the prosecution relies on the pre-sentence report.

4. This court called for a pre-sentence reports by the Probation department. The same is dated 29/10/2025. As regards the 1st accused the report indicates inter alia; that the accused used to consume alcohol previously before converting to Christianity; that the victim's family maintain that the accused and his family members have been sending threatening messages to the effect that they will face dire consequences if released back to the village; that the family of the victim are worried about their safety and are vowing for a custodial sentence as there is still tension on the ground; that the community and area administration indicate that the offender is a rude and violent person who does not like resolving issues peacefully and resorts to violence whenever he feels offended; that they fear that his life is likely to be in danger if he is granted a non-custodial sentence as there is still tension on the ground.

As regards the 2nd accused, the report indicate inter alia; that she is remorseful and asks for forgiveness; that she prays for non-custodial sentence in order to enable her

attend her school going children; that the offender did not assault the victim but only participated in dumping the dead sheep on the victim's bed and that the victim's family are not opposed to her being given a non-custodial sentence; the area administration indicate that they have had no problem with her being granted non-custodial sentence.

As regards the 3rd accused, that he mobilized youths and stormed the house of the victim through the roof and assaulted him viciously until they were satisfied with the act and left; that he prays for a non-custodial sentence as his wife and children ran away; that upon marrying his wife he started interacting with bad groups engaging in unlawful activities and that frequent requests by his parents to change were in vain; that the family of the victim are apprehensive due to the threatening messages sent by the accused and his proxies and that they now seek for custodial sentence; that the area administrators indicate that the offender is a rude person who has been ganging up with bad groups in the village terrorizing people at night; that community members are opposed to him being given a non-custodial sentence as they are aghast at the way he and his group killed the deceased; that there is still tension on the ground and that his life is likely to be at risk if released; that his home and that of the victim is only 30 metres apart and which may create tension between him and the victim's family.

5. I have given due consideration to the mitigation submissions of learned counsels and the pre-sentence report. Under Section 204 of the Penal Code, the maximum sentence for murder is death but owing to the Supreme Court's decision in **Francis Karioko Muruatetu & 2 Others Vs, Republic [2017] eKLR**, held that the mandatory sentence of death was unconstitutional as it denied the courts the opportunity to receive mitigation from offenders before imposing the appropriate sentences. It was therefore held that the courts were now free to receive mitigation from offenders before imposing the appropriate sentence but the courts could as well impose such sentence if the circumstances warrant it. Already, this court vide its judgement dated 24/10/2025 has found the accused persons guilty and convicted them for the offence of murder which attracts a sentence of life imprisonment upon conviction since the death sentence was declared to be unconstitutional vide the Muruatetu case (supra).

6. It is noted that the circumstances leading to the death of the deceased are tragic in that he died a very violent death. The deceased who was then sleeping in his house was descended upon by the 3rd accused who came in with a large group of his gang and viciously attacked him and left him for dead. The deceased was found the following day having passed on. The pathologist Dr. Eric Okong'o (PW6) noted that the deceased suffered a deep cut wound on the forehead as well as several wounds on the forearm,

left shoulder, right knee, middle third tibia, medial aspect as well as a fracture of the right ankle joint. That there was a small subdural haematoma on the left parietal region. That he formed opinion that the cause of death was cardio respiratory failure secondary to tension hemothorax. It is clear that the injuries sustained by the deceased did not give him a chance to survive. Further, the circumstances leading to this incident is worth mentioning in that had the accused persons abided by the directions and advice of the clan elder (PW4), the deceased could be alive today. It was the 3rd accused herein who alleged that the deceased had strangled his sheep and dumped it in a maize plantation and that he later went to report to the clan elder but decided of his own volition to take the dead sheep and dumped it on the bed of the deceased who was not in at the time. The deceased and his family upon arrival stumbled upon the dead sheep on their bed and thus the deceased rushed to report to the clan elder only to find the 3rd accused there. The clan elder advised them that he would deliberate on the matter the following day and that he directed the 3rd accused to go and remove the dead sheep from the deceased bed and take it to their home and to bring it the following morning when he would deliberate on the issue. Apparently, the 3rd accused decided not to wait for the clan elder and took the law in his hands and whipped up his gang members and went to the home of the deceased and viciously attacked him and that the 3rd accused's

parents also joined the fray. The actions of the 3rd accused and his parents in eliminating the deceased without allowing due process to be followed must be deprecated. The pre-sentence report aforesaid indicates that the ground is still hostile against the accused persons save for the 2nd accused. Both the 1st and 3rd accused had been indicated in the report as violent character and that they react violently at the slightest provocation and are not ready for any peaceful settlement over any disagreement. Indeed, the reports indicate that the two accused persons' lives are at risk as the villagers are still bitter at how they had ended the life of an innocent man and who was the bread winner for his family. The deceased did not deserve to die in the manner that he did even if he had been involved in the death of the sheep as there were channels for redress by the accused persons.

7. As regards the sentence to be imposed, the Court of Appeal in the case of **Charo Ngumbao Gugudu Vs. R [2011] eKLR** held as follows:

“Further, the law is that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is not proper exercise for the court to fail to look at the facts and circumstances of the case in their entirety before settling for any given sentence. See Ambani Vs. R [1990] KLR”

8. According to the Judiciary Sentencing Policy Guidelines (2023), sentencing of offenders should take into account the following objectives:

- a) Retribution - To punish the offender for their criminal conduct in a just manner.
- b) Deterrence - To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.
- c) Rehabilitation - To enable the offender to reform from his/her criminal disposition and become a law-abiding person.
- d) 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.
- e) Community protection - To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.
- f) Denunciation - To clearly communicate the community's condemnation of the criminal conduct.
- g) Reconciliation - To mend the relationship between the offender, the victim and the community.
- h) Reintegration - To facilitate the re-entry of the offender into the society.

9. Looking at the circumstances of the offence as well as the pre-sentence reports and the mitigation of the accused persons, it is clear that the 1st and 3rd accused require comprehensive custodial rehabilitation in order to enable them to undergo the requisite rehabilitation before being released to the society. I find that a sentence of twenty (20) years imprisonment is appropriate in the circumstance and which must commence from the date of arrest namely 19th June 2023. As regards the 2nd accused, the pre-sentence report is favourable for a non-custodial sentence. The said 2nd accused has been in custody since date of arrest to date and is believed to have learnt valuable lessons and has had time to reflect on this incident. She is believed to have atoned somewhat for her sins. I am of the view that the 2nd accused herein qualifies for a non-custodial sentence in that it will enable her to take care of her family now that her son and husband will be serving a custodial sentence.
10. In the result, I order the 1st and 3rd accused **John Ochieng Owama** and **Brian Onyango Ochieng** respectively to serve a sentence of twenty (20) years' imprisonment which shall commence from the date of arrest namely 19th June 2023. I further order that 2nd accused herein **Florence Achieng Owama** to serve under probation for a period of three years and that while under probation, she shall adhere to all the probationary terms and in default she shall be ordered to serve custodial sentence for the whole

period regardless of the period already served under probation.

Orders accordingly.

Dated and delivered at Siaya this 21st day of November 2025.

D. KEMEI

JUDGE

In the presence of:

John Ochieng Owama.....1st Accused.

Florence Achieng Owama.....2nd Accused.

Brian Onyango Ochieng.....3rd Accused.

Oduol.....for all Accused.

M/s Kerubo.....for Prosecution.

Maureen/Kimaiyo.....Court Assistant.