



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KABARNET**

**CRIMINAL CASE NO. E002 OF 2023**

**REPUBLIC**.....

.....**PROSECUTOR**

**VERSUS**

**JACKSON                      NYAGA                      MWANGI**.....

.....**ACCUSED**

**RULING ON SENTENCE**

1. The accused **JACKSON NYAGA MWANGI** has been charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of the charge were that on the 21<sup>st</sup> day of June 2017 at Kasiela Rapid Deployment Unit Camp, in Baringo south subcounty within Baringo county, the accused murdered No.20151515037 APC GABRIEL KUNGU NJOROGE. Particulars to count II are that on the same day, same place, the accused murdered No.2008116261 APC FRANCIS KORE EKENO.

2. The accused denied both counts and on 24<sup>th</sup> July 2025, this court found him guilty on both counts and convicted him for each count of the offence of murder contrary to section 203 as read with 204 of the penal code. Upon the conviction, the prosecution informed the court that the accused had no previous conviction.

3. The court called for presentence report before mitigation which was filed on 29<sup>th</sup> September 2025.

#### 4. PRESENTENCE REPORT

5. From the report, the accused was an administration officer attached to Rapid Deployment Unit (RDU) Kasiela operational camp located in Arabal in Baringo county. He is married with one child but they separated in the year 2021. He has a history of taking alcohol since the year 2021.

6. From the report, on the material day, the accused and his colleagues had gone out for shopping where he did hair cut and drank alcohol. At night gunshots were heard in the camp. The accused fled from the camp and was arrested by police reservist while hiding in the wilderness.

7. From the report, despite being found guilty, the accused still maintains his innocence

8. The first victim's father stated that the deceased was their economic pillar as he was the only one employed in the family. The victim was not married and did not have children. They state that as a family, they have been affected financially. The victim's father stated that neither the accused nor his family have approached them to say sorry.
9. In respect to the second victim, the younger brother was available for interview. He said at the time of the death, the deceased was the only one who was employed and the family has suffered financially and as a result of the impact, they lost their mother who suffered emotionally and it eventually affected her health. The 2<sup>nd</sup> victim was married with 2 children who are now under the care of the victim's brother as his wife left; and they believe the death led to breakdown of their family unit. Both families of the 2 deceased persons called for custodial sentence
10. The local administrator Rwathia Location, Kihoya sublocation where accused from talked well of him; he said he was of good conduct and a very resourceful person in the community prior to the incident and the whole community were shocked to learn of the incident. The local administration from his home area do not oppose non-custodial sentence.

### **DETERMINATION**

11. Under section 204 of the Penal Code, the sentence prescribed for the offence of murder is death. However, the Supreme Court in *Francis Karioko Muruatetu & Another v*

*Republic* [2017] eKLR declared the mandatory nature of the death penalty unconstitutional, holding that sentencing is a discretionary judicial function. Courts are now enjoined to consider the peculiar circumstances of each case, the offender's personal situation, and the objectives of sentencing.

12. The objectives of sentencing as set out in the *Sentencing Policy Guidelines (2016)* include retribution, deterrence, rehabilitation, restorative justice, community protection, and denunciation. The appropriate sentence must therefore reflect a balance between the rights of the offender, the interests of the victim's family, and the broader interests of justice.

13. In considering an appropriate sentence, the court is guided by the proportionality principle under **Part I, section 1.3.1 of the 2023 Sentencing Policy Guidelines**, which requires that the sentence imposed be commensurate with both the gravity of the offence and the offender's culpability. The following aggravating factors emerge from the evidence and the presentence report:

- a. **Loss of two lives:** The accused caused the death of two fellow officers in the same incident. The taking of more than one life is recognised as a grave aggravating factor (see **Republic v Ruth Wanjiku Kamande**

**[2018] eKLR**, where the court emphasised the heightened seriousness where multiple victims are involved).

- b. **Breach of trust and duty:** The accused was a trained police officer entrusted with a firearm and the responsibility of protecting life and maintaining order. The use of a service rifle against colleagues constitutes a gross abuse of authority. In the case of **Republic v Stephen Sila Wambua [2019] eKLR**, misuse of a police firearm led to a stiff custodial sentence.
- c. **Impact on victims' families:** Both families suffered severe psychological, social, and economic harm. The first deceased was the sole breadwinner; the second deceased's family structure disintegrated, with his children now dependent on relatives. The mother of the second deceased subsequently died, reportedly after emotional distress linked to the incident. Under **Part V, section 5.1 of the 2023 Guidelines**, victim impact is a relevant factor.
- d. **Lack of remorse:** The accused still maintains innocence despite a conviction based on overwhelming evidence. Lack of remorse may indicate limited potential for

rehabilitation as held in **Republic v Elizabeth Waithieni Ngari [2021] eKLR**.

**14.** I note from the presentence report that the local administration from accused's home area described the accused as of good conduct and resourceful which is a relevant mitigating factor under **section 5.4.5 of the 2023 Guidelines**. I also note that the accused is a father of one child and that he is a first offender. From the presentence report and evidence adduced that the accused had consumed alcohol earlier in the day. While voluntary intoxication does not excuse murder, it may reduce the offender's ability to exercise proper judgment and is therefore relevant in assessing moral blameworthiness. This aligns with the principle of proportionality under **Part I, section 1.3.1 of the 2023 Sentencing Policy Guidelines**, which requires an individualized evaluation of both the offence and the offender.

**15.** Although the court found that the prosecution proved malice aforethought, the degree of moral culpability is moderated by the fact that the accused acted while intoxicated, in circumstances where his reasoning and impulse control were impaired. This warrants consideration while considering appropriate sentence. In the case of **Wanjema v Republic [1971] EA 493**, the Court of Appeal emphasized that a sentencing court must consider both the

circumstances of the offence and the offender to arrive at a just and proportionate sentence.

16. In view of the above, I am required to balance the above considerations against the **grave aggravating factors** being the loss of two lives, the use of a service rifle against colleagues, and the significant and enduring emotional and economic impact on the victims' families. In my view, these factors rule out a non-custodial sentence and call for a custodial sentence so as to achieve the objectives of retribution, deterrence, denunciation and protection of the community under Part V of the 2023 Guidelines. I am of the view that the death penalty and life imprisonment would be excessive in the circumstances of this case. From the foregoing, I find that imprisonment for a period of 30 years for each count will be appropriate in the circumstances.

17. FINAL ORDERS: -

- a) Accused to serve 30 years imprisonment for each count
- b) Sentences in the two counts to run concurrently
- c) Period served by accused in remand to be computed in the sentence above.
- d) Right of appeal within 14 days Explained

Ruling delivered, dated and signed Virtually at Kabarnet

This 27<sup>th</sup> Day of November 2025.

.....  
**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

- CA Elvis
- Ms. Kosgei for state
- Mr. Mongeri for 1<sup>st</sup> Accused
- Accused present

ORIGINAL