

**THE REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
**CRIMINAL CASE NO. 46 OF 2019**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**BENSON WASIKE WAWIRE.....1<sup>ST</sup> ACCUSED**

**BONIFACE SIFUNA WASIKE.....2<sup>ND</sup> ACCUSED**

**SENTENCE**

1. The accused persons, BENSON WASIKE WAWIRE and BONIFACE SIFUNA WASIKE, were jointly charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. After a full trial, this court, in its judgment delivered, found the prosecution had proved its case beyond reasonable doubt and convicted both accused persons of the murder of LAZARUS WANJALA WEKESA.
2. On the 3rd of November 2018, in broad daylight in the market, the accused persons, known to the deceased, forcibly apprehended the deceased. They placed him on a motorcycle and transported him to a homestead. There, in a brutal act of mob violence, they assaulted him. The 1<sup>st</sup> accused stabbed the deceased with a knife, and both participated in beating him. To consummate their heinous act, they covered him with sugarcane waste and set him ablaze, leading to his horrific death from extensive burns and trauma, as confirmed by the pathologist. The callousness was compounded by their defiance of attempts by members of the public to intervene.

3. The offence of murder carries a mandatory death sentence under Section 204 of the Penal Code. However, sentencing is an exercise of the court's discretion guided by the Constitution, the relevant laws on sentencing and the 2016 Judiciary of Kenya Sentencing Policy Guidelines. Despite the importance of the guidelines, sentencing remains the exercise of Judicial discretion as stated by the Supreme Court in **Francis Karioko Muruatetu & Another -V- Republic (2017) eKLR**. The court stated:

***“(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”.***

4. I have considered the following:

a. Victim Impact

The court has taken note of the statements from the victim's family, who continue to suffer profound grief and loss. They have insisted on the most severe punishment available. The manner of death involving abduction, stabbing, beating, and burning was particularly agonizing and degrading, causing immense distress to the family and shock to the community.

b. Aggravating Factors

The offence involved a high degree of cruelty. It was an act of mob justice, which undermines the rule of law and terrorizes society. The court must send a strong deterrent message against such vigilante actions.

The accused acted in the heat of a family driven conflict, reacting to the deceased's destructive and provocative conduct. Their actions, though unlawful, arose from heightened emotions within strained familial ties rather than premeditated malice. This context, and their close relationship to the deceased, warrants consideration for leniency in sentencing.

c. Mitigating Factors by the Accused

Both accused persons are first time offenders with no previous criminal records, as confirmed by the pre-sentence reports and they have pleaded for leniency.

5. The pre-sentence reports indicate a possible context of prior provocation, noting that the deceased had allegedly burned down a house and stabbed goats at the homestead of his wife, where he was ultimately killed and had committed violent acts against his in-laws. While this in no way justifies the murder, it provides some context to the accused's state of mind and the genesis of the community grievance.

6. There exists a familial relationship between the accused and the deceased. The 1<sup>st</sup> accused, Benson Wasike, reports that the deceased was married to his aunt. The 2<sup>nd</sup> accused, Boniface Wasike, states the

deceased was his uncle, a brother to his stepmother. This tragedy has fractured familial bonds. Hence, the victims act initiated the whole reaction.

7. The sentence must balance the need for retribution for the life taken, deterrence against mob justice, protection of society, and rehabilitation of the offenders where possible. In the High Court decision in **Mareen Kathure vs. Republic (2018) eKLR**, Gikonyo, J. restated the purpose of sentencing afore-outlined and further set out some principles in sentencing in the following words:

***“Imposition of punishment is a matter for the discretion of the Court. Except, the Court must consider the facts and circumstances of each case in order to impose punishment... Thus, in exercising its discretion in sentencing, the Court should bear in mind the principles of proportionality, deterrence and rehabilitation. In assessing proportionality, take into account mitigating and aggravating factors...”***

8. The convicts committed a grave and serious crime. The sanctity of human life is paramount, and taking it in such a brutal fashion demands a severe punitive response to reflect societal condemnation.
9. However, in the exercise of the discretion having considered the totality of the circumstances, particularly their status as first offenders, the element of misplaced retaliation for prior wrongs allegedly committed by the deceased, and the complex familial relationships involved, the court finds that the interests of justice would be served

by a custodial sentence that allows for the possibility of rehabilitation and eventual reintegration.

10. Consequently, the mandatory death penalty is hereby set aside. Each convict is sentenced to a term of imprisonment. Taking all factors into account, and giving significant weight to the mitigating circumstances, the sentence is mitigated from what would otherwise have been a lengthier term.

### **Orders**

11. The 1<sup>st</sup> accused, BENSON WASIKE WAWIRE, is sentenced to (25) twenty-five years imprisonment.
12. The 2<sup>nd</sup> accused, BONIFACE SIFUNA WASIKE, is sentenced to (25) twenty-five years imprisonment.
13. The period of imprisonment shall be computed from the date of their first arrest and remand, pursuant to **Section 333(2) of the Criminal Procedure Code.**
14. Pursuant to **Article 50(6) of the Constitution**, they retain the right to appeal against both conviction and sentence within the stipulated period.
15. Right of Appeal 14 days explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 1<sup>st</sup> DAY OF DECEMBER, 2025.**

**S.MBUNGI**

**JUDGE**

**In the presence of:-**

**CA:** Angong'a

Injahau holding brief for Mr. Mulama for the Accused present.