

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAPENGURIA.**

**CRIMINAL CASE. NO. E008 OF 2023**

**STATE ..... PROSECUTOR**

**- V E R S U S -**

**REUBEN LOTOLIM ..... ACCUSED**

**RULING ON SENTENCE.**

**Reuben Lotolim** has been convicted for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

He was found guilty of murdering his brother **Korikwang Loitereng** on 13/8/2023.

The matter is now before me for sentencing. Sentencing is an exercise of the court's discretion. The Court is guided by the Constitution, any other 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 Jurisdiction as was expressed 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”.**

Page 15, paragraph 4.1 of the Sentencing Policy Guidelines provides as follows:-

- (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/her 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;
- (v) Community Protection; to police the community by incapacitating the offender.

- (vi) Denunciation; to communicate the community's condemnation of the criminal conduct.
- (vii) Reconciliation; to mend the relationship between the offender the victim and the community
- (viii) Reintegration; To facilitate the re-entry of the offender into the society.

In sentencing, the court also considers various mitigating factors. (See **Muruatetu Case**)

- (1) Age of the offender;
- (2) Being a first offender;
- (3) Whether the offender pleaded guilty;
- (4) Character and record of the offender;
- (5) Commission of the offence in response to gender-based violence;
- (6) Remorsefulness of the offender;
- (7) The possibility of reform and social re-adaptation of the offender;
- (8) Any other factor that the court considers relevant.

The prosecution treated the accused as a first offender.

In his mitigation, accused was said to be remorseful, and regret the murder of his own brother; He has a young family which depends on him. He pleaded for leniency.

The court has also considered the presentence report. The report confirmed that there existed a long-standing land dispute between accused and his deceased brother. Even after the murder, the accused has continued to harass the deceased's family by taking their cattle and land and threatening the family. This action goes to demonstrate that the accused is not remorseful.

The court takes into account the manner in which the deceased met his death. The attack was vicious and unforgiving. There were multiple injuries all over the body, several cuts on the head, through the skull, fractures on the limbs; the neck's major blood vessels were all severed. No doubt the accused wanted his own brother, very dead. A life was lost for no good reason and the deceased left a very young family too. How much did the accused hate his own sibling? He deserves death too. However, I will sentence him to forty (40) years imprisonment.

**Sentence delivered, dated and signed in open court at  
Kapenguria this 2<sup>nd</sup> day of December, 2025.**

**R. WENDOH.  
JUDGE**

**In the Presence of:-**

Accused – present

Mr. Ndinyo holding brief for Mr. Lowasikou for accused.

Mr. Majale - Prosecution Counsel

Juma- Court Assistant