

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAPENGURIA.

CRIMINAL CASE. NO. 3 OF 2023

STATE PROSECUTOR

- V E R S U S -

DANIEL MNANGAT NGOLESIA..... ACCUSED

RULING ON SENTENCE.

Daniel Mnangat Ngolesia 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 **Isaac Liktari Loitasiwa** on 20/5/2023.

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.

In this case, the Prosecution did not have the accused's previous records and treated Accused as a first offender.

In his mitigation, Accused was said to be remorseful; that he has a young family and pleaded for leniency.

The court called for a presentence report in which the accused was described as being hot tempered with frequent outbursts and Physical confrontations. In this case, he trailed a person he suspected to have an affair with his wife and ended up killing an innocent person. An innocent life was lost accused should have addressed the issue in a civil manner instead of violence.

Having taken his mitigation into account, the fact that he is a first offender, the Presentence report and the circumstances surrounding the commission of the offence, this court considers a deterrent sentence appropriate. I therefore sentence the accused to thirty-five (35) years imprisonment.

Sentence delivered, dated and signed in open court at Kapenguria this 2nd 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/ Hellen Court Assistants