

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
CRIMINAL CASE NO. E023 OF 2023

REPUBLICDIRECTOR OF PUBLIC PROSECUTIONS****
VERSUS
SAMUEL NYONGESA KUNDU
alias SAMMY.....ACCUSED****

RULING

1. The accused person herein was convicted on 14th November 2025, of the murder Beatrice Aluoch Muga, on 25th November 2023. He is now a convict. I am called upon to sentence him for that offence. I will consider the penalties available in law for that offence, the circumstances of the commission of the offence, the feelings of the family of the victim and the antecedents of the convict.
2. The penalty prescribed by the law for murder is the mandatory death sentence. However, recent developments, in the jurisprudence on mandatory sentences, have brought about some element of reform. *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ) made mandatory death, the punishment for murder, unconstitutional. That meant that for murder the penalties available would include imprisonment.
3. I called for a pre-sentence report. The probation office has compiled the report, and has filed it, dated 2nd December 2025, filed herein on even date. It is not favourable. The convict is not remorseful, according to that report. He is said to have come out as dishonest, as he gave varied accounts of what really

happened, and shifted blame to others, and avoided taking responsibility for his actions.

4. The convict was convicted of murder. The killing happened in the most gruesome manner, after which the convict buried the body of the deceased, in a shallow grave, within her compound, to conceal evidence. He then fled. There was mention that a cow might have been stolen, within the period that the deceased met her demise, and fingers were pointed at the convict. There was mention of abuse of narcotics.
5. The deceased was an elderly woman. The convict had been employed to play the role of the guardian of the deceased, in addition to doing chores within her compound. His complicity in her killing pointed to a gross abuse of the trust. His employers had entrusted their mother to him, but he abused that trust.
6. The killing of the deceased fell in the category of coldblooded murder, where the killing was most senseless. There was no evidence that the deceased had done anything against the convict, to draw his ire, and to warrant the taking of a life, and an unceremonious disposal of her remains.
7. I have noted the circumstances of the commission of the offence, the statements made by the Advocate for the convict in mitigation, and the pre-sentence report. I have also noted the antecedents of the convict, especially the fact that he has a young child. I have taken all these into account, balancing them against the fact that a human being lost her life.
8. I am satisfied that the convict herein deserves the severest sentence available, to remove him from society, where he is a menace, to teach him a lesson in life, and to accord him an

opportunity to reflect and reform, away from society. A sentence of 50 years imprisonment would suffice, in the circumstances, and that is what is hereby imposed. There is a right of appeal to the Court of Appeal, within 14 days. Orders accordingly.

**DELIVERED, DATED AND SIGNED IN OPEN COURT, AT BUSIA,
THIS 19TH DAY OF DECEMBER 2025.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

**Mr. Onanda, instructed by the Director of Public Prosecutions,
for the Republic.**

Mr. Otieno, Advocate for the accused person.