

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT VIHIGA
CRIMINAL CASE NO 31 OF 2021

REPUBLIC
VERSUS

ELPHAS OTIENDE ANDURU ALIAS OTINA.....1ST
ACCUSED

LILIAN ANGISO ROBERT.....2ND
ACCUSED

SENTENCE

1. On 24th November 2025, this court convicted the 1st and 2nd Accused persons herein for the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code Cap 63 (Laws of Kenya) under Section 215 of the Criminal Procedure Code Cap 75 (Laws of Kenya).
2. In his mitigation, the 1st Accused person said that he was aged fifty six (56) years and had a young family. He said that he was a first offender and expressed remorse for having committed the offence. He prayed that the court exercises leniency and metes out on him a non-custodial sentence.
3. In her mitigation, the 2nd Accused person stated that she was fully conscious of the weight of the offence, that she respected the decision of the court and would abide by any decision of the court. She said that she was a first offender and a law-abiding citizen who served as a Pastor and leader and conducted herself with dignity.
4. She averred that she was emotionally fragile but reformable. In this regard, she pointed out that she had strong ties with the family and

community which would help her prospects of rehabilitation by providing her spiritual and psychological support, a situation that would be best served by a non-custodial sentence. She urged this court to balance the seriousness of the offence with her special circumstances of being of ill health and exercise its leniency by meting upon her a non-custodial sentence.

5. On its part, the Prosecution stated that the 1st Accused person was more to blame for the death of the deceased and that although he had said that he had a young family and was remorseful, it was necessary that he be deterred and be reformed. It asked this court to balance the interests of the community with those of the secondary victims who were still terrified by the occurrence of that fateful day. It added that there could have been common intention of further harm.
6. With regards to the 2nd Accused person, it averred that although the community had vouched for a non-custodial sentence and she had a medical condition, the court should mete out a sentence that balanced her medical condition, the views of the secondary victims and the interests of the community with a view to deterring her from such occurrences and reforming her.
7. According to the Pre-sentence Report of J. Sahani, Probation Officer, Vihiga County dated 16th December 2025 and filed on 21st January 2026, the 1st Accused person was fifty-six (56) years old. He attended Esiandumba Primary School and later joined Esalwa

Secondary School. However, he dropped out in Form Two (2) due to financial constraints.

8. He moved to Nairobi and worked as a skilled driver with Exel Chemicals for fourteen (14) years between 1993 and 2014. He then moved to Kisii where he briefly worked for a construction company for a year before his contract was terminated. He returned to his rural home where he engaged in subsistence farming alongside occasional driving work within Luanda Township.
9. He was a polygamous man with three (3) wives and six (6) children. He had no previous convictions and/or criminal records. He reported that he previously consumed alcohol but stopped and was currently a cigarette smoker. He was a Christian.
10. He denied committing the offence asserting that he was implicated due to his longstanding land dispute with the deceased's son. He added that he was framed in order to facilitate what he believed to be a fraudulent acquisition of his ancestral land. His family advocated for the court's leniency on his part.
11. On the other hand, the deceased's family expressed profound grief, anger and fear arising from the incident that led to the death of their kin, citing the severe psychological trauma suffered by the widow as well as the loss of the family's breadwinner and head of the household. They alleged that the 1st Accused person issued threats while out on bond which heightened their sense of insecurity. They

unanimously opposed any form of leniency and strongly advocated for the imposition of a custodial sentence.

12. The local administration and the community reported that the 1st Accused person was a generally peaceful and sociable person and had no prior criminal record. They were hopeful that the court would exercise leniency in sentencing.

13. The Probation Office opined that the 1st Accused person was unsuitable for a non-custodial sentence at this stage and recommended that the court considers a custodial sentence which would serve the interests of justice while allowing time for structured rehabilitation to take place within the correctional system.

14. In her Pre-sentence Report dated 20th January 2026 and filed on 21st January 2026, Everlyne Milimu, Probation Officer, Vihiga County stated that the 2nd Accused person was sixty-two (62) years old. She attended Emutsa Primary School and Esalwa Secondary School but dropped out in Form Two (2) due to lack of school fees. She later resorted to farming and small scale business. Before her arrest she was running a general shop at the local shopping centre.

15. She was married and had five (5) children. She was asthmatic, had ulcers and a hip dislocation which interfered with her normal day to day activities. She was a Christian and had no disability.

16. She was evasive about committing the offence stating that she did not give the knife to the 1st Accused person. She was hopeful that

she would be released from prison soon because her health was not good and that her mother depended on her.

17. Her family described her as a calm, highly regarded and important member of the family. They maintained that she was innocent and attributed her predicament to her family bonding the 1st Accused person. They hoped that justice would be served and the truth would set her free as her health condition was deteriorating.

18. The local administration and the community portrayed a positive attitude towards her stating that she had no interest in whatever way on the disputed land. They pleaded for leniency on her behalf and advocated for a non-custodial sentence as she faced several health challenges and was in constant medication.

19. The Probation Office noted that although her social history pointed to leniency, the nature of the offence and the adverse effects on the deceased's family led it not to recommend non-custodial sentence.

20. Notably, sentencing was one of the most intricate aspects of trial. Indeed, a trial did not end unless a sentence had been meted out. The principle of sentencing was fairness, justice, proportionality and commitment to public safety. The main objectives of sentencing were retribution, incapacitation, deterrence, rehabilitation and reparation. The Sentencing Policy Guidelines in Kenya had added community protection and denunciation as sentencing objectives. The objectives were not mutually exclusive and could overlap.

21. It was also important that the sentence communicate to the community, condemnation of their criminal act. The sentence would indirectly send a strong signal to deter would be offenders from committing such an offence. The sentence also had to be one that was hinged on retributive justice for the secondary victims.
22. If the court did not take into account the three (3) objectives of deterrence, retribution and denunciation of his offence at the time of sentencing them, chances of accused persons being reintegrated in the society would be next to impossible as there were possibilities of being harmed. Killing someone was an abomination in the society. Justice not only needed to be done but it had to be seen to be done.
23. Although the local administration and the community vouched for the 1st and 2nd Accused persons having good conduct and urged this court to exercise leniency on their part, a non-custodial sentence was not a prudent recommendation in the circumstances of this case. The 2nd Accused person handed over the knife to the 1st Accused person and egged him on to kill the deceased by stating “Otiende, shamba haiwezi enda bure. Lazima mtu alale” (Otiende, the land cannot go for free. Someone must sleep). The 1st Accused person acted on her encouragement and made the deceased “sleep.” If the 2nd Accused person did not hand over the knife to the 1st Accused person, he would probably not have stabbed the deceased. It was, therefore, difficult to state who was most culpable in the circumstances of the case and they had to share the blame

equally. They shared a common intention to cause the death of the deceased.

24. The punishment of the 2nd Accused person would have been lower if she had uttered the same words to egg on the 1st Accused person to ensure the deceased “slept” but did not provide him with the murder weapon. This is because the 1st Accused person was an adult and could make his own decisions which he only would bear the consequences of his decisions.

25. The court noted that both the 1st and 2nd Accused persons were peaceful and first offenders and that the 2nd Accused person had a medical condition which in its Ruling of 4th February 2026 the court observed could be managed in prison. It was evident from the facts of the case that the injuries that were inflicted on the deceased were only meant to cause harm. Although there was a land dispute between the deceased’s son and the 1st Accused person, the anger was not worth it.

26. Notably, killings emanating from land disputes which were sometimes already pending in court, was a common occurrence in Vihiga County making visits to disputed parcels of land by surveyors, lawyers and litigants a precarious one. This was one such case where people took the law into their hands disrupting the work of persons who were on official duty and endangering the lives of all those who were in the disputed land at the material time.

27. There was, therefore, need to deter the 1st and 2nd Accused persons who had still denied having committed the offence as was evident from the Pre-Sentence Reports a clear indication that they had still not taken full responsibility of what happened on that material date. In the mind of this court, they were not remorseful. It was also necessary to send a message to the community that killings arising from land disputes would not be tolerated no matter how aggrieved a party to a dispute was.

28. This court noted that the prescribed mandatory minimum sentence for murder under Section 204 of the Penal Code was death sentence. Having considered the facts of this case, the 1st and 2nd Accused persons' mitigation, the Prosecution's response thereto, the Pre-Sentence Reports and bearing in mind that sentencing was the sole discretion of the court, this court came to the firm conclusion that a sentence of ten (10) years imprisonment would be suitable and adequate herein.

29. Going further, this court was mandated to consider the period that they spent in remand while the trial was on going in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

30. The said Section 333(2) of the Criminal Procedure Code provides that:-

“Subject to the provisions of section 38 of the Penal Code (cap 63) every sentence shall be deemed to commence

from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody

(emphasis court).

31. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

Time already spent in prison by the convict...”

32. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in **Ahamad Abolfathi Mohammed & Another vs Republic [2018] eKLR.**

33. The 1st Accused person was first arraigned in court on 28th October 2019. He was released on bond on 7th November 2019. The 2nd Accused person was arrested on 6th December 2019. She was released on bond on 19th December 2019. They were convicted on 24th November 2025 and remanded again after their bond was

cancelled. The period they spent in remand, therefore, ought to be taken into consideration while computing their sentence.

DISPOSITION

34. Accordingly, it is hereby directed that the 1st and 2nd Accused persons be and are hereby sentenced to ten (10) years imprisonment each to run from the date of this Sentence.

35. For the avoidance of doubt, the periods between 28th October 2019 and 7th November 2019 and between 24th November 2025 and 11th February 2026 be and are hereby taken into account while computing the 1st Accused person's sentence in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

36. For the avoidance of doubt, the periods between 6th December 2019 and 19th December 2019 and between 24th November 2025 and 11th February 2026 be and are hereby taken into account while computing the 2nd Accused person's sentence in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

37. It is so ordered.

DATED and **DELIVERED** at **VIHIGA** this **12th** day of **February** 2026

J. KAMAU
JUDGE