



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL CASE NO. 45 OF 2012

REPUBLIC

PROSECUTOR

VERSUS

BENARD ALUBOKHO ASWANI

ACCUSED

RULING ON SENTENCE

1. The Accused was convicted for murder contrary to Section 203 as read with Section 204 of the Penal code.
2. In mitigation, the Accused expressed deep remorse. He said that he is a young man aged 34 years old and a father of four (4) children aged between 14 years and 3 years all of whom are wholly dependent on him. He said that he regrets the incident and is prepared to reform. He prays for a non-custodial sentence to assist him rehabilitate. According to him, the victim's family is prepared to pardon him.

3. Ms. Chala for the Prosecution submitted that the Accused is a first offender but noted that he committed a serious offence.
4. The pre-sentence report indicates that victim's mother is still grieving over the offence which occurred during commemoration of her daughter's death. Such wounds are too deep to heal quickly. In contrast, the victim's brother prayed for leniency to be extended to the Accused. His opinion was that no one witnessed the exact circumstances leading to the fatal injury.
5. The Community perceives the Accused in a sympathetic manner and take the view that based on his good behaviour and positive contribution to the society, the Accused is suitable for community-based rehabilitation. They pray that the court considers a lenient sentence for the Accused so that he can take care of his young family.
6. In light of the seriousness of the offence and the positive pre-sentence report, the court is called upon to balance retributive and restorative objectives of sentencing.
7. This case has been pending since 2012 and has heavily burdened both the Accused person and the victim's

family. From the records, the Accused was placed in custody on 22nd November 2012 and released on bond on 18th April 2018, a total of five years five months. During this period, the Accused must have had time to reflect on the consequences of his ill conceived actions.

8. Nevertheless, the court is mindful of the fact that the Accused committed a serious offence. Taking into account the time already spent in custody by the Accused, and having considered the aggravating and mitigating circumstances, I sentence the Accused to fifteen (15) years imprisonment.

Dated, signed and delivered at Kakamega this 10th day of February 2026.

**A. C. BETT
JUDGE**

In the presence of:-

Ms. Chala for the Prosecution

Mr. Siro holding brief for Mr. Getanda for the Accused

Court Assistant: Polycap