

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUSIA**  
**CRIMINAL CASE NO. E002 OF 2025**

**REPUBLIC .....**DIRECTOR OF PUBLIC PROSECUTIONS**  
**VERSUS**  
**MARTIN ODUOR alias NYANYA.....**1<sup>ST</sup> ACCUSED**  
**STEPHEN OUMA.....**2<sup>ND</sup> ACCUSED********

**RULING**

1. The accused persons herein were convicted, on 2<sup>nd</sup> February 2025, of the murder of William Owino, on 14<sup>th</sup> November 2024. They are now convicts. I am called upon to sentence them 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 convicts.
2. The penalty, prescribed by the law, for murder, is mandatory death, according to section 204 of the Penal Code, Cap 63, Laws of Kenya. However, *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ) made mandatory death, as the punishment for murder, unconstitutional. That meant that for murder the penalties available should be those others provided in law, including imprisonment, which is what ordinarily obtains for manslaughter.
3. As stated above, the penalty for murder, according to section 204 of the Penal Code, is death; while that for manslaughter is a maximum of life imprisonment, by virtue of section 205 of the Penal Code. *Francis Karioko Muruatetu & another vs. Republic* [2017] eKLR (Maraga CJ&P, Mwilu DCJ&VP, Ojwang, Wanjala, Njoki & Lenaola, SCJJ), has thrown everything into a spin, by erasing the mandatory death sentence. Yet, the Attorney-General has not taken steps to have the Penal Code amended, to align it to the emerging jurisprudence. It would now appear that there is no difference between murder and manslaughter, so far as sentence is concerned.

4. I called for pre-sentence reports. The probation office has compiled and filed them, both dated 19<sup>th</sup> February 2026. They are generally favourable. The convicts as reflected as being remorseful, although denying complicity in the killing. They both state they went to the scene where the deceased was being assaulted, but deny taking part. whereas that aligns with what the 1<sup>st</sup> convict told the court, it differs from what the 2<sup>nd</sup> convict stated in defence, that he never went to the scene. That would mean the 2<sup>nd</sup> convict lied to court, on oath.
5. I have noted the circumstances of the commission of the offence, the statements made by the Advocate for the convicts in mitigation, and the pre-sentence reports. I have also noted the antecedents of the convicts, and the sentiments of the family of the victim, and the community. I have taken all these into account, balancing them against the fact that a human being lost his life, in a most senseless way. I note that this was a case of mob justice, in which the 2 convicts participated. In the circumstances, I shall give them each a custodial sentence, being imprisonment, to be served for 10 years. 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  
27<sup>TH</sup> DAY OF FEBRUARY 2026.**

**W MUSYOKA  
JUDGE**

**Mr. Arthur Etyang, Court Assistant.**

**Advocates**

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

**Mr. Juma, the Advocate for the convicts.**