

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAPENGURIA.

CRIMINAL CASE NO. E 001 OF 2025.

STATE PROSECUTOR

- V E R S U S -

REUBEN KARAKACHA MUKHWANA 1ST ACCUSED

TOM WAFULA KHAMALA alias SAMIDO 2ND ACCUSED

RULING ON SENTENCE.

Reuben Karakacha Mukhwana and Tom Wafula Khamala alias Samido (Accused 1 and 2 respectively) were convicted for the offence of Murder contrary to section 203 as read with section 205 of the Penal Code. They are before this court today for purposes of sentencing.

Sentencing is essentially an exercise of the court’s discretion guided by the Constitution, other relevant laws on sentencing and the 2016 Judiciary of Kenya Sentencing Policy Guidelines. Despite the importance of the said guidelines, sentencing remains an exercise of judicial discretion 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 for what the court should consider 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 **Muruatetu's Case** the Supreme Court also set down some mitigating factors that the court may consider while sentencing which are;

- (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.

The Court asked the Probation Office to make an inquiry and present to court pre-sentence reports to guide the court in sentencing.

From the pre-sentence reports, it has been disclosed that both Accused are not first offenders. Accused1 is serving a two-year jail term for escaping from lawful custody having been arrested in this matter. Accused 2 on the other hand was convicted and sentenced to three (3) years imprisonment for offence of theft and was released a few months before arrest in this matter.

The Accused's Counsel, in mitigation, asked the court to be lenient because the accused persons have corporated with the police after arrest, are remorseful and are bread winners for their families.

As regards Accused1, his family were not aware of his whereabouts between 2020 and 2024 when he was arrested. According to the Pre-sentence report, the accused has not shown any remorse and due to the fact that he has other ongoing cases in Kitale, he cannot be suitable for non-custodial sentence.

Similarly, the Probation Officer indicates that the Accused 2 has not shown any remorse.

Due to the callous and reckless actions of the accused in mercilessly attacking the deceased, a young promising life was lost. A gap was left in the victim's family that cannot be filled. In my considered view, a deterrent sentence is preferred and I hereby sentence each accused to serve forty (40) years imprisonment. The sentence will commence today, 25/2/2026.

Sentence delivered, dated and signed in open court at Kapenguria this 25th day of February, 2026.

R. WENDOH.

JUDGE

In the Presence of:-

Accused 1 & 2 – present

Mr. Kimani for accused.

M/s Koech for State/ Prosecution Counsel

Juma/ Hellen- Court Assistants