

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO. E011 OF 2021

REPUBLIC

.....**PROSECUTOR**

VERSUS

SAMUEL SIMEL SEMEIYAN Alias DODO.....1ST

ACCUSED

BENJAMIN REMPEIYIAN SEMEIYAN Alias KADONG....2ND

ACCUSED

BENJAMIN ROINET NTARYA.....3RD

ACCUSED

RULING ON SENTENCE

1. The three Accused persons were charged with Murder contrary to Section 203 as read with Section 204 of the Penal Code. Following a full trial, they were convicted on the lesser charge offence of Manslaughter contrary to Section 202 as read with

Section 205 of the Penal Code. The offence carries a maximum sentence of life imprisonment.

2. The State having no previous records requested that the Accused be treated as first offenders. In mitigation their counsel prayed for a non-custodial sentence citing the age of the Accused persons, their personal circumstances and their own remorse at the offence. The court called for and received presentence reports. The court has reviewed the pre-sentence reports which highlight the individual circumstances of the Accused, and especially the fact that all were young person's eking out a living from casual jobs, and had no previous involvement in criminal activities. The reports, citing likely stigma in the community and uncertain work locations of the Accused did not expressly endorse non-custodial sentences.
3. Sentencing is a vital process in the administration of justice. It is discretionary. Thus, clause 4.6.1 of the Sentencing Guidelines (2023) provides inter alia that the sentencing process is an integral part of the trial and is therefore subject to the fair hearing constitutional guarantees. The Supreme

Court of India in the case of, **Antony Pareira V State of Maharashtra (2 AIR 2012 SC 3802)** held that that:

"Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done"

4. These views were reiterated by the Supreme Court of Kenya in **Francis Karioko Muruatetu & another v Republic [2017] eKLR** where it was held that although the death sentence provided for murder in the Penal Code remained lawful, the mandatory nature of the sentence was unconstitutional as it tended to take away the discretion of the court in sentencing. Directing that re-sentence hearings be conducted for affected convicts and prisoners, the court listed some mitigating factors applicable as follows;

- (a) age of the offender
- (b) being a first offender;
- (c) whether the offender pleaded guilty;

- (d) character and record of the offender;
- (e) commission of the offence in response to gender-based violence;
- (f) remorsefulness of the offender;
- (g) the possibility of reform and social re-adaptation of the offender;
- (h) any other factor that the Court considers relevant.

5. The Supreme Court was also quick to add the caveat that:

[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".

6. Clause 1.3 of the Sentencing Guidelines (2023), identifies the objectives of sentencing as: -

“a) Retribution: To punish the offender for his/her criminal conduct in a just manner. It serves to deter future crime. Victims and society

might feel satisfied that the criminal justice system is functioning well when they learn that the offender has received an appropriate sentence for their crimes, which raises trust in the criminal justice system

b) Deterrence: To deter the offender from committing a similar offence or any other offence in future as well as to discourage the public from committing similar offences. Thus, it is divided into two components: individual and general deterrence. Individual deterrence is to dissuade the perpetrator with the objective to inflict a punishment severe enough to deter the offender from engaging in criminal activity. The convict is expected to be discouraged from committing crimes in the future as a result of the sentence. The society is the target of general deterrence. Other people are deterred from committing those offences by the punishment meted out to those who commit them.

c) Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person. It aims at changing the offenders and make it easier for them to reintegrate into society, through a variety of programs and treatments. It focusses on treating the root reasons of criminal behaviour, such as dependency, mental health conditions, or a lack of education. The objective is to give the offender the resources and assistance they need to upon release, become law-abiding citizens.

d) Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs. Any harm done to the victim may be compelled to be repaired or restored by the court. The goal is to put the victim back in his pre-crime status or position.

The goal of restoration is to make up for any harm the perpetrator has caused the victim.

e) Restitution deters crime by financially penalizing the offender. It is somewhat like a civil lawsuit damages judgement and occurs when the court directs the offender to compensate the victim for any injury. Restitution may be required in cases of financial loss, property damage, and, in rare cases, mental suffering. It may also take the form of a fine to help defray part of the expense of the criminal investigation and punishment.

f) Community protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.

g) Denunciation: To clearly communicate the community's condemnation of the criminal conduct.

h) Reconciliation: To mend the relationship between the offender, the victim and the community.

i) Reintegration: To facilitate the re-entry of the offender into the society.

j) Incapacitation's main purpose is to simply keep offenders outside of society so that everyone is safe from their potentially harmful actions. A person convicted of a crime should not be permitted to mingle with the general public if there is no assurance that they will not commit the same crime again. In certain civilizations, punishment takes the form of death sentence, or it may entail a sentence of life in jail without the chance of release.”

7. The guidelines apply to all criminal offences. The 1st and 2nd Accused are siblings. All three Accused are young, aged between 28 and 23 years of age. The court considered the circumstances in which offence was committed, namely after an altercation arising at a construction site when the deceased

caretaker refused to allow the Accused to carry out works for which they had been hired. It may well be that more persons at the site were involved in the resulting melee, but evidently the Accused herein were key actors in the assault leading to the injuries from which the deceased died.

8. While the deceased disrupted the construction work thereby causing anger among workers assembled at the site ready to earn, the ensuing assault was vicious and disproportionate. There can be no justification for the Accused persons taking the law in their hands and their use of crude weapons against the deceased as happened here. Moreover, following the offence, the Accused persons went underground for a period of almost a year. The pre-sentence reports indicate the Accused's failure to take personal responsibility for their role in the death of the deceased, whether or not other people may have been involved.

9. Hence the need for an opportunity for them to introspect on their roles if they are to start on the journey of reform. Nobody is entitled to take the life of another merely because of provocation arising from a dispute such as occurred in this

case. That said, the court noting that the 2nd Accused was the youngest of the offenders at 23 years of age and a sibling of the 1st Accused is persuaded to temper justice with mercy.

10. In the circumstances, the court hereby sentences each of the 1st and 3rd Accused to serve two years imprisonment. The 2nd Accused is however placed on probation for a period of three years. During the probationary period, the 2nd Accused will be obligated to keep the probation office informed of any change in his work place or residence. The Accused have 14 days to lodge an appeal.

**DELIVERED AND SIGNED AT KAJIADO ON THIS 17TH DAY OF MARCH
2026**


**C. MEOLI
JUDGE**

In the presence of:

For the State: Ms. Kivali

For the Accused: Mr Mbuthia

Accused 1,2 & 3: Present

C/A: Lepatei