

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIVASHA**  
**HIGH COURT CRIMINAL CASE NO. 4 OF 2020**

REPUBLIC.....

.....PROSECUTION

VERSUS

OSCAR MWENESI PANYAKO.....

.....ACCUSED

**JUDGMENT ON SENTENCE**

1. The accused was arraigned before the court charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code (Cap 63) Laws of Kenya. The particulars of the charge are as per the charge sheet.
2. The information was read to the accused and he pleaded not guilty thereto and the case fully heard. By

a judgment dated 13<sup>th</sup> February 2026, he was found guilty and convicted of the offence herein

3. The court directed records of the accused be provided for however, at the time of writing the judgment on sentence the same had not being availed. Consequently, the accused is treated as a first offender.
4. Subsequently court ordered for and was provided with the pre-sentence report and victim impact assessment report which are also considered alongside mitigation submissions.
5. Pursuant to the aforesaid, the pre-sentence report reveals that the accused comes from a disintegrated family and does not know his father and his mother left him while still young and remarried. That he was raised up by his grandmother and introduced to his

mother while a teenager and they didn't bond. That his mother was later killed by her husband.

6. Further, that the accused comes from a very poor family background where affording basic needs was a problem. That the home environment was not conducive and that his grandmother was an alcohol brewer with alcohol problem. However, the accused's sister stated that the accused was well behaved while growing up and was never in conflict with the law and prayed for a lenient sentence.
7. The report further reveals that the accused is thirty-five (35) years old. That he attended school up to standard 6 but dropped out due to financial difficulties and engaged in casual work to make ends meet including buying food. That he married Sheila Musembi and they have two children aged fourteen (14) and ten (10) years old.

8. That before his arrest he worked at Sunflora Flower Farm and also as a caretaker in the plot he resided in. That his wife went to Saudi Arabia to seek employment to take care of their children who currently reside with their maternal grandmother.
9. The report indicates that the accused continues to deny committing the offence and blames Otis for the predicament but prays for a lenient sentence to be able to take care of his son so that does not have the same kind of experiences he had while growing up.
10. The report states that the community through the local administration stated that the accused is well behaved and does not have any criminal behavior.
11. The report also indicates that the victim was nineteen (19) years old engaged in motorcycle business. That at the time of his death he had a child who was abandoned on the street by his mother after the

deceased's death. That the child is now in the care of the victim's brother.

12. The victim's brother stated that the death of the deceased has caused trauma to his family who need counselling. That they are psychologically affected as they are yet to find closure with the deceased's brother blaming himself for not mentoring the deceased well. Further his mother developed diabetes and high blood pressure, and due to the use of too much medicine she has developed kidney failure.

13. Further that the deceased brother is financially burdened as he was left to care for his ailing mother and the deceased's child alone. That his wife left him because of too many responsibilities. The deceased's family has suffered as the case has taken long but are happy its coming to an end and pray for justice.

14. In conclusion, the probation officer identified the accused push factors to be lack of parental guidance, poor anger management and identity crises and taking into consideration all the circumstances left the matter the discretion of the court.
15. The accused in mitigation submissions states that he is a first offender, not a habitual offender and is capable of reform. Further, he is the sole bread winner and caretaker of his family with two children aged fourteen (14) and ten (10) years old and has struggled to provide for them through honest means despite coming from a background of hardship. That he has his family's support and his mother has been assisting him with responsibilities.
16. Further, he suffers from high blood pressure and while he has no other underlying medical condition, a custodial sentence may adversely affect his health

due to stress and limited access to consistent medical care.

17. He states that he regrets the circumstances that led to the offence herein, that he never went looking for trouble but it found him though he should have controlled himself. That he is remorseful and prays for leniency and asks the court to take into consideration the six (6) years he has spent in lawful custody since his arrest.

18. In addition to the afore reports, the objectives of sentence under clause 1.3 of the Sentencing Guidelines (2023) the sentencing policy here below are considered: -

*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.*

19. In addition, the case of *Francis Karioko Muruatetu & another v Republic [2017] eKLR* the Supreme Court of Kenya, set the factors to consider when meting out sentence as follows: -

*“[71] As a consequence of this decision, paragraph 6.4-6.7 of the guidelines are no longer applicable. To avoid a lacuna, the following guidelines with*

*regard to mitigating factors are applicable in a re-hearing sentence for the conviction of a murder charge:*

*(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.*

*[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*

20. In the instant matter, it is clear the accused has continued to deny commission of the offence therefore he cannot benefit from a non-custodial sentence. Furthermore, the deceased was a young man aged 19 years who had just gotten into his prime years in life and his life was cut short.

21. Moreover, the evidence adduced show that although the disagreement was between the deceased and one Otis, the accused got involved into a fracas he had nothing to do with. That instead of mediating the disagreement he armed himself and became the perpetrator of the offence.

22. The impact of the death of the deceased on his family cannot be ignored as it is described to be enormous and indeed, what sentence this court will mete out will never restore the deceased to life. In that case the

accused cannot be allowed to walk around to continue with his life as though the deceased life mattered less.

23. Furthermore, there are increased incidents of murder reducing the sanctity of life to nothing and a deterrence sentence is called for. I therefore sentence the accused to serve thirty (30) years imprisonment less six (6) years in custody to twenty-four (24) years subject to remission. Right of appeal 14 days explained.

24. It is so ordered.

Dated, delivered and signed on this 26<sup>th</sup> day, March 2026

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

Ms. Chepkonga for the State

Mr. Karanja for the accused

Accused present virtually

Ms. Hannah: court assistant