

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**CRIMINAL CASE NO. E003 OF 2024**

**REPUBLIC .....PROSECUTION**

**VERSUS**

**RICHARD OKUTA ATIEKO.....1<sup>ST</sup>**

**ACCUSED**

**CALVIN OTIENO OKOKA.....2<sup>ND</sup> ACCUSED**

**RULING**

1. The accused herein **Richard Okuta Atieko** and **Calvin Otieno Okoka** have been charged with an offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars are that on 7<sup>th</sup> September 2023 at unknown hours in Hawinga Sub location in Siaya Sub County

within Siaya County, jointly with others not before court unlawfully killed one David Omondi. However, following the judgement of this court dated 24<sup>th</sup> March 2026, the accused was convicted for a charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.

2. The sentencing hearing proceeded on 13/4/2026. Mr. Ooro F for the defence submitted first for the 1<sup>st</sup> accused inter alia; that the 1<sup>st</sup> accused is a first offender; that he is remorseful over the offence; that he is a family man with three children plus an elderly mother; that his children are in Grades 1, 4 and 6; that he seeks to be considered for a lenient sentence such as a probation order as recommended by the probation officer. As regards the 2<sup>nd</sup> accused, it was submitted inter alia; that he is a first offender and is remorseful and prays for leniency; that he is a family man with two wives and eight children with the first born in Form three while the last born is yet to start schooling; that the children require his attention as one of them suffers from anaemia (sickle cell) and needs great care and attention; that a non-custodial sentence of probation be given.
3. M/s Mumu for the prosecution submitted inter alia; that they are opposed to a non-custodial sentence; that the deceased was killed in a brutal manner as he was picked from his house while asleep and taken to Hawinga trading centre where he was brutally beaten to death by the accused persona and

others; that this kind of crime is rampant within the Siaya County; that a custodial sentence be imposed to serve as a lesson to others in the society.

4. This court called for a pre-sentence reports by the Probation department. The same are dated 10/4/2026 and indicates inter alia; that the two accused herein had joined other members of public in attacking the deceased who had been suspected to have stolen a motor cycle; that they regret joining the irate mob and that they were enticed by their peers to commit the offence; that the family of the victim are still bitter over the loss of their kin and that the accused persons even after being released on bond failed to reach out to them for any reconciliation; that the local administration confirmed that the victim had been involved in criminal activities in the past and at one time was rescued from being lynched over criminal activity in the village; that the local community have no objection to the accused being granted a no-custodial sentence as there is no hostility in the area.
5. I have given due consideration to the mitigation submissions of learned counsels and the pre-sentence report. Under Section 205 of the Penal Code, the maximum sentence for manslaughter is life imprisonment. However, the maximum sentence is usually reserved for the worst form of offenders. Looking at the circumstances of the case, I am of the view that the accused do not merit a sentence of life imprisonment. It is noted that the offence was committed as a result of the accused herein joining irate members of public who flushed

out the deceased from his room while asleep with his girlfriend and frog matched them to Hawinga centre where they viciously assaulted them. The accused and others later tied the victims onto a certain kiosk (stall) before the deceased's female companion was rescued while the deceased was not so lucky as he succumbed to the injuries. Hence, the deceased met his tragic death thanks to the accused persons who teamed up with members of public and subjected him to mob injustice. It is trite that all homicides are unlawful unless authorized by law. Had the accused persons and the irate mob not taken the law into their hands, the deceased could be alive today. They should have handed the victims to the authorities so that the law could take its just course.

6. The circumstances leading to the death of the deceased are tragic. The body of the deceased was found lying dead at Hawinga centre having been tied up and tethered to a certain stall. The pathologist, Dr. Okongo Eric (PW1) noted that the body had multiple abrasions on the shoulders, right and left fore-arms and stomach. That there was a partial collapse of the left lung. That there was bilateral subdural hematoma. That he formed the opinion that the cause of death was severe head injury with tension pneumothorax secondary to blunt trauma. It is trite that all homicides are unlawful and hence the deceased did not deserve to die even if he had been suspected of being a thief in the area. It is noted that the deceased was at the time asleep in the company of his

girlfriend when he was rudely woken up and frog-matched to Hawing a centre where he was brutally assaulted until he died while his female companion survived. The accused persons and the members of public ought to have used other avenues of redress instead of taking the law into their hands and that had they done so, the deceased would be alive today. The deceased did not deserve to die in the manner that he did.

7. As regards the sentence to be imposed, the Court of Appeal in the case of **Charo Ngumbao Gugudu Vs. R [2011] eKLR** held as follows:

**“Further, the law is that sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and that it is not proper exercise for the court to fail to look at the facts and circumstances of the case in their entirety before settling for any given sentence. See Ambani Vs. R [1990] KLR”**

8. According to the Judiciary Sentencing Policy Guidelines (2023), sentencing of offenders should take into account the following objectives:

- a) Retribution - To punish the offender for their criminal conduct in a just manner.
- b) Deterrence - To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.

- c) Rehabilitation - To enable the offender to reform from his/her criminal disposition and become a law-abiding person.
  - 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.
  - e) Community protection - To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.
  - f) Denunciation - To clearly communicate the community's condemnation of the criminal conduct.
  - g) Reconciliation - To mend the relationship between the offender, the victim and the community.
  - h) Reintegration - To facilitate the re-entry of the offender into the society.
9. Looking at the circumstances of the offence as well as the pre-sentence reports and the mitigation of the accused persons herein, it is noted that the accused persons herein killed the deceased while in concert with other members of public as they were upset by the conduct of the deceased over his criminal activities in the area. However, their behaviour in eliminating the deceased without the due process was unlawful. The accused should have used lawful channels by

engaging the local authority regarding the alleged criminal activities of the deceased but not to take the law into their hands. This was unwarranted. It is also noted that these kinds of offences are quite rampant within Siaya County and thus there is need to contain them by imposing custodial sentences so as to deter would be offenders in the future. The custodial rehabilitation will help to mould the accused persons into better individuals before being released back to the society.

10. It is noted that the accused persons did manage to post bail and had been out on bond until the time of their conviction and hence the application of section 333(2) of the Criminal Procedure Code shall not apply. The sentences shall therefore run from the date of conviction, namely 24/3/2026.
11. In the result, i order each of the accused persons herein **Richard Okuta Atieko and Calvin Otieno** to serve a sentence of ten (10) years imprisonment which shall commence from the date of conviction namely 24<sup>th</sup> March, 2026.

Orders accordingly.

**Dated and delivered at Siaya, this 28<sup>th</sup> day of April 2026.**

**D. KEMEI**

**JUDGE**

**In the presence of:**

**Richard Okuta Atieko.....1<sup>st</sup> Accused.**

**Calvin Otieno Okoka.....2<sup>nd</sup> Accused.**

**Ooro F.....for Both Accused**

**Soita.....for Prosecution**

**Mourine.....Court Assistant.**