

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL CASE NO. E016 OF 2025

REPUBLICPROSECUTION

VERSUS

ALLOYS OTIENO OGOLA Alias

OTIENO AMAMBE

ACCUSED

RULING

1. The accused herein **Alloys Otieno Ogola alias Otieno Omambe** has 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 14th day of May 2025 at Malanga village West Sihay Sub location, North East Ugenya Location in Ugenya Sub County within Siaya County, killed one David Otieno Aduongá alias Ojwando. However, following the

plea agreement entered into by the parties herein dated 10th October, 2025, the accused later on 13th April 2026 pleaded guilty a lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and was subsequently convicted therefor.

2. The sentencing hearing proceeded on 13/4/2026 and 21/4/2026. M/s Owuor for the defence submitted inter alia; that the accused has pleaded guilty to the new charge; that the Sentencing Guidelines have to be considered by the court; that the accused used the deceased's weapon in self-defence; that the accused aged 50 years has a family and school going children who rely on him for support; that the accused's productive years are likely to be affected; that the accused regrets the incident and prays for a non-custodial sentence; that the accused is a first offender with no previous records; that the accused had not expected the turn of events and has apologized to the family of the deceased and the community as well; that the accused worked as a night guard at a certain school when the deceased attempted to steal school property and that he attempted to attack the accused who was forced to defend himself; that the accused has pleaded guilty and saved judicial time and merits a non-custodial sentence; that the court should take notice of the fact that there is a right to property; that the accused did warn the deceased who retorted that the property did not belong to the accused; that the accused was provoked and that had he not defended himself,

he would have been killed; that the incident took place around 5.00 AM and that the accused could not have identified the intruder and that the accused had used reasonable force to repulse the intruder.

3. Mr Soita for the prosecution submitted inter alia; that a custodial sentence be imposed due to the nature of the injuries inflicted upon the deceased.
4. This court called for a pre-sentence report by the Probation department. The same is dated 17/4/2026 and indicates inter alia; that the deceased entered the school compound where the accused worked as a night guard and attempted to steal construction materials and that upon being confronted by the accused, the deceased became violent and threatened to harm the accused who, in self defence, struck the deceased severally fatally wounding him and later surrendered himself to the police; that the accused has tried to reach out to the family of the victim but that they are still bitter over the loss of their kin; that the family of the accused are still open to negotiations and reconciliation; that the deceased used to suffer from mental illness; that the accused was aware of the mental illness of the deceased and who was his neighbour and first cousin and ought to have spared his life; that the community members and local administration are disappointed by the extreme reaction from the accused towards the victim who was well known to him and that a life was lost which showed that the accused had ill feelings towards him and that they vouch for a custodial sentence; that the probation officer recommends for a custodial

sentence as the accused ought to have exercised restraint even though he was then protecting his employer's property as he went overboard; that the accused had known that the deceased had mental challenges and used to roam the village at night and had been tolerated by the villagers.

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 does not merit a sentence of life imprisonment. It is noted that the offence was committed as a result of the accused herein attacking the deceased within the school compound in an attempt to repulse him from stealing school property and that the deceased succumbed due to the fatal injuries. The pre-sentence report indicates that the deceased had been known by all and sundry as a person who suffered mental illness and that the accused wo had known him as he was his cousin ought not to have used excessive force while repulsing him. Hence, the deceased met his tragic death thanks to the accused who used excessive force. It is trite that all homicides are unlawful unless authorized by law. Had the accused used other forms such as raising alarm and alerting the neighbours, the deceased could be alive today. The deceased was the accused's neighbour and cousin and had known him and that he could as well have engaged the

villagers and eventually could have caught up with the suspect and recovered any stolen items in addition to letting him face the full force of the law. Further, the accused could as well have just scared him away but not to go at him hammer and tongs until he died. The autopsy report indicated that the deceased suffered several fractures which did not give him a chance to survive.

6. The circumstances leading to the death of the deceased are tragic. The body of the deceased was found lying dead within the compound of Uringi primary school. The pathologist, Dr. Tedd Timon noted that the body had multiple fractures on arms and legs as well, as the head. That he formed the opinion that the cause of death was severe injury secondary to head 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 who had been known to suffer from mental illness was at the time roaming in the area and had ventured into Uringi Primary School where the accused worked as a night guard before an encounter ensued wherein the accused fatally injured him. The accused's claim that he was acting in self-defence is not convincing in that the several injuries inflicted on the deceased showed that the accused wanted to finish him off completely. The said injuries could not enable the victim to survive. Again, the claim by the accused that it was around 5.00 AM and could not identify the intruder is not convincing since his counsel confirmed that there was a

conversation between him and the deceased and further, the accused was deemed to have had a torch for use as a watchman at night and which could have enabled him to recognize the intruder as his neighbour and cousin. It seems that the accused had been incensed after he had been admonished for sleeping on the job while school construction materials were being stolen and thus waited for an opportunity to teach any intruder a lesson. The accused ought to have used other avenues of redress such as raising alarm and alerting the neighbours instead of taking the law into his hands and killing the deceased. Had he scared off the intruder upon recognizing him or in the least applying reasonable force, the deceased would be alive today. I find that 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 report and the mitigation of the accused herein, it is noted that the accused herein killed the deceased while he had known that he suffered from mental illness and usually roamed the village. However, the accused's action of 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 his hands. As noted above, the accused appeared overzealous and went overboard in repulsing the deceased from the school compound and used excessive force. This was unwarranted. It is instructive that despite the accused's claim that he had defended himself and overpowered the deceased who was armed, did not present the alleged weapons to the authorities and which left no doubt that the weapons used must have belonged to the accused. Further, there is no evidence whatsoever that the accused sustained any injury as a result of his encounter with the deceased. The severe injuries inflicted on the deceased as per the autopsy report left no doubt that the accused intended them to cause death and no wonder that the deceased died on the spot and that the body was later found lying within the school compound of Uringi Primary School. It is evident that the accused is a person of ungovernable anger and that he requires to undergo comprehensive custodial rehabilitation before being allowed to rejoin the community.

10. It is noted that the accused did manage to post bail and had been out on bond until the time of his 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 13/4/2026.

11. In the result, i order the accused herein **Alloys Otieno Ogola alias Otieno Amambe** to serve a sentence of ten (10) years imprisonment which shall commence from the date of conviction namely 13th April, 2026.

Orders accordingly.

Dated and delivered at Siaya, this 4th day of May, 2026.

HON. D. KEMEI

JUDGE

In the presence of:

Alloys Otieno Ogola alias

Otieno Amambe.....Accused

M/s Awuor.....for Accused

Soita.....for Prosecution

M/s Mourine.....Court Assistant.

SIAYA HCCRC NO.E016 OF 2025 - RULING