



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Nyongesa (Criminal Case E026 of 2023)
[2025] KEHC 12034 (KLR) (30 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 12034 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL CASE E026 OF 2023
RN NYAKUNDI, J
JULY 30, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SIMON NYONGESA ACCUSED

JUDGMENT

1. The Accused person herein was charged with the offence of Murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the case are that on the 11th day of November 2023 at Boma Village in Soy Sub-County within Uasin Gishu County in the Republic of Kenya murdered Jane Kwamboka Michieka.
2. The Accused person pleaded not guilty of the offence giving way to the prosecution to give evidence to disapprove his right to innocence contrary to Article 50[2] of *the Constitution*.
3. The lead Counsel for the defense was Mr. Misoy for the Accused whereas Ms. Kirenge appeared on behalf of the Director of Public Prosecution.

A summary of the Prosecution's case

4. PW1 Nyabuti Michieka told the Court that on 11th November 2023, he received a telephone message touching on the incident involving the accused and the deceased by the name Jane Kwamboka Michieka. He rushed to the mortuary and observed that the deceased had suffered multiple severe injuries with major pronouncement on a major neck cut injury which was suffered.
5. PW2 Sammy Ireng testified as a clan elder to the effect that on or about 6 o'clock, he heard screams which invited him to rush to the scene. The first observations he made when he arrived at the scene were streams of blood in a neighbor's house. The streams of blood led them to another house whose door was locked but there was someone inside. On close observation, he saw a human being standing



and another one lying on the floor. The one lying on the floor was a victim of assault with a cut neck half way done. A decision was made in the first instance to arrest the man who was at the scene and have him escorted to the police station for further investigations.

6. In the same line of the prosecution case, PW3 Peris Chepkurui, told the Court that on 11th November 2023, she had screams on the neighborhood with the following words being uttered; he has killed! He has killed! In response to the screams she rushed to the scene which was three [3] metres away and on arrival he confirmed the existence of a dead body of the female gender whose neck had been half way severed. The streams of blood according to PW3 were all over the scene. She also confirmed that the suspect was arrested at the same scene.
7. The Prosecution also summoned the evidence of PW4-PC Edward Cherop who was under instructions of the OCS to investigate the incidence of murder which had been reported by the clan elder and PW1. Therefore, PW4 acting on the instructions, he rushed to the scene, made arrangements for the body to be picked and taken to the mortuary for the post mortem examination. According to PW4, the Accused person had also been taken to the hospital to undergo some treatment and soon thereafter was arrested and charged with the offence of murder.
8. PW5 was Dr. Erick Chesoni who gave evidence as having gone through the body of the deceased during the post mortem examination and made the following positive findings;

That the victim suffered a deep cut wound to the neck. The cut wound affected the jugular veins and left carotid artery and other peripheral injuries, there was partial fracture of the fourth cervical vertebra. As a result of the examination, Dr. Chesoni formed the opinion that the cause of death was severe haemorrhage, secondary to severed left carotid and jugular vessels around the neck. He produced the Post Mortem report as Exhibit 1 in support of the prosecution case.

9. On the other hand, the Prosecution adduced forensic evidence following analysis on the following exhibits forwarded by Corporal Charles Rono to the government Chemist Kisumu;
Exhibit marked A- A blood sustained kitchen knife collected from the scene of murder.
Exhibit marked B- A container containing blood sample collected during autopsy
Exhibit marked C- A swab containing vaginal swabs sample collected during autopsy.
Exhibit marked D-1- blood stained khaki trouser that had been worn by the suspect.
Exhibit marked D-2- blood stained Lesso collected behind the suspect rental house.
Exhibit marked D-3- blood stained T shirt that had been worn by the suspect.
10. In the matter at hand, the Government Analyst subjected the above exhibits and samples to a DNA profiling as between the connecting factor between the Accused person and the deceased as to whether there any traces of evidence to place him at the scene of the crime. Thus, in his conclusion, the Analyst GK Waliama had this to say;
 1. That the DNA profile generated from the blood stains on the knife [item "A"], the trouser [item "D1"], the leso [item "D2"] and the t-shirt [item "D3"] are all identical and match the DNA profile generated of Jane Kwamboka Michieka [deceased]
 2. That the DNA profile generated from the cream stains on the high vaginal swab [item "C"] matches the DNA profile generated from the reference sample of Jane Kwamboka Michieka [deceased].



11. The government chemist testified as PW6, confirming that the knife and clothing at the scene had traces of both the deceased and the accused's blood.
12. PW7 was the investigating officer, CPL Rono, who testified that upon being notified of an instance of mob justice by PW3, they swiftly jumped into action rescuing the accused and thereafter taking the body of the deceased and the accused to MTRH. He recorded the statements of the witnesses and oversaw the post mortem. In his assessment of the situation, the accused person was responsible for the death of the deceased given that he was the last person to be seen and found with her and could not count for how she lost her life. The knife, muddy trouser, Bob Marley t-shirt and lesso that had covered the deceased were produced as exhibits 2-5 respectively.
13. The scenes of crime officer testified as PW8 producing the photos showing the grotesque and inhumane manner in which the deceased met her death.
14. The accused person denied having rented a house at Boma, knowing the deceased and ever being found in the same house with her that morning. According to him, he passed via a liquor den on the morning of 11th November, 2023 at 6:30AM where he was beaten by persons unknown to him and consequently lost his memory. Notably he could not account for the fact that the prosecution witnesses had found him in the house at Boma at 6AM, hence making his timeline of events questionable.
15. Both parties filed their written submissions which have been briefly captured as hereunder:

Prosecution's written submissions

16. Learned Prosecution Counsel Ms. Kirenge submitted on the essential elements of the offence of murder being: that the deceased is dead, that the death was caused unlawfully, that there was malice aforethought and that the accused person directly or indirectly participated in the commission of the alleged offence.
17. As to the fact of death, Ms. Kirenge submitted that the deceased died on or before the 11th November, 2023, having suffered numerous stab wounds on her chest and neck and having lost blood.
18. On the element of malice aforethought, learned counsel submitted that from an analysis of the circumstantial evidence and the "last seen" theory, the accused was found in the company of the deceased when she had already died. Counsel submitted that the fact that he has no reasonable explanation as to how the deceased met her death and that there is overwhelming evidence in the form of DNA evidence of the accused person on the clothing and body of the deceased together with a knife that was found at the scene, and further given that the deceased had stab wound injuries which led to her death goes to show that the accused and nobody else had a hand in her death.

The defense written submissions

19. Learned Counsel Mr. Misoi in submitting for the accused person stated that at the close of the prosecution case, none of the witnesses saw the accused person commit the offence; PW4 was P.C. Edward Cherop who testified that on the 11th November, 2023 at 7:30 AM, he received a call from OCS Kamukunji Police Station informing him of the incident. The witness then, in company of his colleague, took a motorbike to Boma village and on arrival found a man being assaulted by people where they rescued him.
20. According to Mr. Misoi, the prosecution did not place the accused person at the scene of crime as none of the witnesses saw the accused commit the crime or witnessed the actual crime being committed at the scene. It is submitted for the accused person that the evidence by the prosecution was merely



speculative and based on suspicion. Counsel cited the decision in *John Kamau Mangara v. Republic* [2019] which emphasized that suspicion even when supported by medical evidence is insufficient to convict an accused person of a crime. It was further submitted for the accused that the prosecution did not meet the requisite threshold to convict the accused person of the offence. The prosecution did not clearly discharge the burden of proof which required that sufficient evidence to support the claim of murder of the deceased on 11th November, 2023.

21. Counsel further submitted on the defense of alibi and cited the Court of Appeal's case in *Charles Anjare Mwamubi v. Republic* [CR. Appeal No. E226 of 2002] where the court held that the defense of alibi does not shift the burden of proof to the accused. That the accused only needs to raise a reasonable doubt in the court's mind about their involvement in the crime.
22. It is on the strength of such submissions that learned counsel urged this court to find that the prosecution failed to prove their case beyond reasonable doubt and that this was a weak case to warrant the conviction of the accused person.

Analysis and determination

23. As a matter of reiteration, section 203 of the Penal Code provides that any person who of malice aforethought causes the death of another person by an unlawful act or omission shall be guilty of murder. The elements of the offence are well settled being:
 - a. the death of the deceased occurred
 - b. the death was caused by unlawful acts;
 - c. that the accused committed the unlawful act which caused the death of the deceased; and
 - d. that the accused had malice aforethought.
24. This is a criminal charge and the duty rests squarely on the prosecution to prove every essential element constituting the offence beyond reasonable doubt. There is no duty whatsoever on the part of the accused to prove his/her innocence or even to prove anything on his/her part. As Art. 50[2][a] provides, every person suspected of an offence has a right to be presumed innocent until the contrary is proved including to remain silent at the trial and not to testify at all.
25. The Supreme Court of Nigeria in *Bakare v State* [1985] 2 NWLR stated as follows:

“Proof beyond reasonable doubt stems out of the compelling presumption of innocence inherent in our adversary system of criminal justice. To displace the presumption, the evidence of the prosecution must prove beyond reasonable doubt that the person accused is guilty of the offence charged. Absolute certainty is impossible in any human adventure, including the administration of criminal justice. Proof beyond reasonable doubt means just what it says, not admit of plausible possibilities and fanciful possibilities but it does admit a high degree of cogency consistent with an equally high degree of probability.”
26. Similarly, in *Miller v Ministry of Pensions* [1947] 2 AII ER 372 he stated as follows:

“That degree is well settled. It need not reach certainty, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond the shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence 'of course it is possible,



but not in the least probable' the case is proved beyond reasonable doubt, but nothing short of that will suffice."

27. This standard and burden of proof is also illustrative of the provisions seen in section 107[1], 108 and 109 of the *Evidence Act*. It is now my singular duty to answer the question whether the prosecution has proved each of the elements of the offence of murder as defined under section 203 of the Penal Code.
28. On the first element there is clear evidence that Jane Kwamboka Michieka died on the 11th day of November 2023. This was established through the testimony of PW1 Nyabuti Michieka who identified the deceased as his relative and observed her body at the mortuary with multiple severe injuries, particularly a major neck cut injury. The evidence of PW5 Dr. Erick Chesoni, who conducted the post mortem examination, confirmed that the victim suffered a deep cut wound to the neck affecting the jugular veins and left carotid artery, with partial fracture of the fourth cervical vertebra. Dr. Chesoni formed the opinion that the cause of death was severe hemorrhage, secondary to severed left carotid and jugular vessels around the neck. The Post Mortem report was produced as Exhibit 1 in support of the prosecution case. In short, there is ample evidence establishing the death of the deceased on the material day.
29. The evidence shows that the deceased suffered a deep cut wound to the neck which affected vital blood vessels and caused severe hemorrhage leading to death. The testimony of PW2 Sammy Ireng, who found streams of blood at the scene and observed the deceased with her neck half way severed, corroborates the medical findings. PW3 Peris Chepkurui also confirmed finding the deceased with her neck half way severed and blood all over the scene.
30. What really amounts to an unlawful act causing death for purposes of a murder charge under section 203 of the Penal Code? In my view, I consider to be unlawful acts carried out by a human being against another while armed with dangerous weapons targeting vulnerable parts of the body to commit infliction of serious harm which is traceable to the cause of death of the deceased. These unlawful acts are committed without lawful justification or excuse. The direct evidence of the witnesses and the post mortem report shows very clearly that the deceased's death was unlawful through severe neck injuries. There is no defence of self or provocation on the part of the accused person.
31. The question of identification is crucial in criminal proceedings, and the court must be satisfied beyond reasonable doubt that the perpetrator of the crime is indeed the person standing trial. The guiding principles on this element are as set out in *R v Turnbull and others* [1976] 3 All E.R. 549 where the court emphasized the need for careful examination of identification evidence. The court stated:

"First, wherever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the Judge should warn the jury of the special need for caution before convicting the accused in reliance to the correctness of the identification or identifications. In addition, he should instruct them as to the reason for the need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Secondly, the Judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation" At what distance" In what light" Was the observation impeded in any way, as for example by passing traffic or a press of people" Had the witness ever seen the accused before" How often" If only occasionally, had he any special reason for remembering the accused" How long elapsed between original observation and the subsequent identification to the police" Was there



any material discrepancy between the description of the accused given to the police by the witness when first seen by them and the actual appearance"

32. In this case, the evidence linking the accused to the commission of the offence comes from several sources. PW2 Sammy Ireng testified that when he arrived at the scene following screams, he observed streams of blood leading to a house where the door was locked but there was someone inside. On close observation, he saw a human being standing and another one lying on the floor with a cut neck. The one standing was the accused person who was at the scene and was arrested.
33. Similarly, PW3 Peris Chepkurui testified that she heard screams with words "he has killed! He has killed!" and rushed to the scene which was three metres away. On arrival she confirmed the existence of the deceased's body whose neck had been half way severed, and she also confirmed that the suspect [the accused] was arrested at the same scene.
34. The most compelling evidence comes from the forensic analysis conducted by the Government Analyst GK Waliama. PW6 testified that the DNA profiling revealed that:
- "The DNA profile generated from the blood stains on the knife [item "A"], the trouser [item "D1"], the leso [item "D2"] and the t-shirt [item "D3"] are all identical and match the DNA profile of Jane Kwamboka Michieka [deceased]
- The DNA profile generated from the cream stains on the high vaginal swab [item "C"] matches the DNA profile of Jane Kwamboka Michieka [deceased]"
35. PW7 CPL Rono, the investigating officer, testified that the accused was found at the scene with the deceased and could not account for how she lost her life. The knife, muddy trouser, Bob Marley t-shirt and leso that had covered the deceased were produced as exhibits 2-5 respectively, all containing traces of the deceased's blood and linking the accused to the crime scene.
36. The final element to be established is malice aforethought. Section 206 of the Penal Code defines malice aforethought as being established by evidence proving any one or more of the following circumstances: an intention to cause the death of or to do grievous harm to any person; knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person; and an intent to commit a felony.
37. The court in *Rex v Tubere s/o Ochen* [1945] 12 EACA 63 held:
- "The court has a duty to perform in considering the weapon used and the part of the body injured, in arriving at a conclusion as to whether malice aforethought has been established, and it will be obvious that ordinarily an inference of malice will flow more readily from the case, say of a spear or knife than from the use of a stick"
38. In this case, the evidence clearly establishes malice aforethought under section 206[a]. The deliberate use of a knife to inflict deep cuts to the neck of the deceased demonstrates an intention to cause death or grievous harm. The choice of weapon, a blood-sustained kitchen knife recovered from the scene and the manner of its use against the deceased's neck, one of the most vulnerable parts of the human body, shows a deliberate intention to cause serious harm or death.
39. As stated in the case of *Robert Onchiri Ogeto v Republic* [2004] KLR 19:
- "The prosecution does not have to prove the motive for commission of any crime, neither is evidence of motive sufficient by itself to prove the commission of a crime by the person



who possesses the motive. By section 206 [a] of the Penal Code, malice aforethought is deemed to be established by evidence showing an intention to cause death or to do grievous harm. It can be reasonably inferred that when the appellant stabbed deceased with a knife on the chest he intended to cause death or grievous harm to the deceased."

40. The accused person denied having rented a house at Boma, knowing the deceased and ever being found in the same house with her that morning. According to him, he passed via a liquor den on the morning of 11th November, 2023 at 6:30AM where he was beaten by persons unknown to him and consequently lost his memory.
41. However, this defence of alibi lacks credibility for several reasons. Notably, he could not account for the fact that the prosecution witnesses had found him in the house at Boma at 6AM, hence making his timeline of events questionable. The DNA evidence overwhelmingly places him at the scene of the crime, with his blood and that of the deceased found on his clothing and the murder weapon.
42. This case presents a compelling combination of both direct and circumstantial evidence. As stated in *R v. Taylor wear and Denovan* [1928-29] 21:

"Circumstantial evidence is very often the best evidence. It is evidence of surrounding circumstances which, by intensified examination, is capable of proving a proposition with the accuracy of mathematics. It is no derogation of evidence to say that it is circumstantial."
43. The prosecution's case is not merely speculative or based on suspicion as argued by the defence counsel. The evidence includes:
 - Direct testimony from witnesses who found the accused at the scene
 - Forensic DNA evidence linking the accused to the murder weapon and crime scene
 - Medical evidence establishing the cause and manner of death
 - Recovery of physical exhibits containing the deceased's blood
44. Having carefully considered all the evidence presented, this court is satisfied that the prosecution has proved beyond reasonable doubt all the essential elements of the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The death of Jane Kwamboka Michieka has been established; the death was caused by an unlawful act; the accused committed the unlawful act that caused the death; and the act was committed with malice aforethought.
45. In the circumstances, this court finds the accused Simon Nyongesa guilty of the offence of murder contrary to section 203 as read with section 204 of the Penal Code and convicts him accordingly.

Ruling On Sentencing

1. The Accused person herein has been convicted of the offence of murder contrary to section 203 punishable under Section 204 of the Penal Code. The particulars were that on the 11th day of November 2023 at Boma Village in Soy Sub-County within Uasin Gishu County, he murdered one Jan Kwamboka Michieka. Upon a full trial, and having carefully evaluated the testimony of PW1 to PW5, the post mortem report by Dr. Erick Chesoni, and the DNA analysis report by G.K. Waliama, this Court found that the prosecution proved its case beyond reasonable doubt. The Accused was accordingly convicted of the offence of murder on 25th July 2025.



2. The court now faces the solemn task of determining an appropriate sentence that balances the imperatives of justice, punitive sanctions, and societal protection while acknowledging the human dignity of the offenders.
3. In compliance with the jurisprudential guidance of the Supreme Court decision in Francis Karioko Muruatetu & another v Republic [2017] eKLR, this court conducted a sentencing hearing and invited mitigation. The Muruatetu case declared the mandatory nature of the death sentence for murder under Section 204 of the Penal Code unconstitutional, holding instead that courts must retain discretion to impose appropriate sentences based on mitigating and aggravating circumstances.
4. Mr. Misoi, counsel for the Accused person mitigated stating that the Accused is a first offender, he is a young Kenyan who is yet to establish a family, he is remorseful for the unfortunate event and that he needs a chance to bond with the family and the society.
5. In considering the appropriate sentence, I am guided by the Supreme Court decision in Francis Karioko Muruatetu and Another v Republic and Others [2017] eKLR, which established that despite section 204 of the Penal Code providing for a mandatory death sentence upon conviction for murder, the court retains discretion in sentencing. That discretion must however be exercised judiciously and not capriciously. In African Continents Bank V Nuamani [1991] NWLI 486, the Court stated that:

“The exercise of court’s discretion is said to be judicial if the judge invokes the power in his capacity as a judge qua law. An exercise of discretionary power will be said to be judicial, if the power is exercised in accordance with the enabling statutes, discretionary power is said to be judicious if it arises or conveys the intellectual wisdom or prudent intellectual capacity of the judge. The exercise must be based on a sound and sensible judgment with a view to doing justice to the parties.”

6. In the Francis Muruatetu case, the Supreme Court guided as follows, both in the Original Petition and in the Directions given on 6/7/2021 while providing clarity on the judgment that had applied the principle that mandatory sentences were unconstitutional in as far as they deprived the trial courts of the discretion to mete out appropriate sentences having regard to the circumstances of each case and also denied the accused persons the opportunity to mitigate.

“vii. In re-hearing sentence for the charge of murder, both aggravating and mitigating factors such as the following, will guide the court;

- [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] The manner in which the offence was committed on the victim;



- [g] The physical and psychological effect of the offence on the victim’s family;
 - [h] Remorsefulness of the offender;
 - [i] The possibility of reform and social re-adaptation of the offender;
 - [j] Any other factor that the Court considers relevant.
- ix. These guidelines will be followed by the High Court and the Court of Appeal in ongoing murder trials and appeals. They will also apply to sentences imposed under Section 204 of the Penal Code before the decision in *Muruatetu*.”
7. In arriving at a just sentence, I am also reminded to consider the 2023 Judiciary of Kenya Sentencing Policy Guidelines which expressly provide that sentences are imposed to meet the following objectives:
- a. Retribution: to punish the offender for his/her criminal conduct in a just manner.
 - b. Deterrence: to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - c. Rehabilitation: to enable the offender 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.
 - e. Community protection: to protect the community by incapacitating the offender.
 - f. Denunciation: to 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.
8. I take note that where a court is convinced, after considering all the factors, an injustice would follow if the minimum sentence is imposed, then it can characterize such factors as constituting substantial and compelling circumstances and deviate from imposing the prescribed minimum sentence.
9. Henriques J referred to *S v Vilakazi* 2009 [1] SACR 552 [SCA], where the court [in *Vilakazi*] explained that particular factors, whether aggravating or mitigating, should not be taken individually and in isolation as substantial or compelling circumstances. In deciding whether substantial and compelling circumstances exist, one must look at traditional mitigating and aggravating factors and consider the cumulative effect thereof. When sentencing, a court considers the personal circumstances of an accused. However, only some carry sufficient weight to tip the scales in favour of the accused to impact on the sentence to be imposed. Often the fact that the accused is young and is a first offender has the effect of reducing a sentence.



10. The minimum sentences have been legislated to be the sentences that must ordinarily be imposed unless the court finds substantial and compelling circumstances, which justify a departure therefrom. In addition, the Supreme Court of Appeal has indicated that the minimum sentences must not be departed from for 'flimsy reasons' and are the starting point when imposing sentence.
11. In the event of substantial and compelling circumstances not existing, a sentencing court can then consider departing from imposing the prescribed minimum sentences, if it is of the view that having regard to the nature of the offence, the personal circumstances of the accused, and the interests of society, it would be disproportionate and unjust to do so. This is often referred to as the proportionality test. In my view however, the proportionality test must be viewed against all the circumstances of the case, particularly the interests of society in violent and serious crimes.
12. The point of departure in sentencing is to have regard to the three interconnected factors relevant to an appropriate punishment. It is the Court's task to have regard not only to the offender, but also the offence itself and the interest which society has in the imposition of a suitable sentence [S v Zinn 1969 [2] SA 537 [A].
13. During sentencing the court must also be directed at addressing the traditional purposes of punishment. These are deterrence, prevention, retribution and rehabilitation of the offender. At the end of it all, it is the unenviable task of the Judge to achieve a proper balance amongst these competing factors and ultimately arrive at a sentence that is just. For that is what *the Constitution* ultimately requires that a Court must strive for: justice.
14. The Constitutional Court of South Africa in *State v. Makwanyane* [1995] CCT/3/94 remarked as follows on mitigation and aggravating factors in sentencing:

“mitigating and aggravating circumstances must be identified by the court, bearing in mind that the onus is on the state to prove beyond reasonable doubt the existence of aggravating factors, and to negative beyond reasonable doubt the presence of any mitigating factors relied on by the accused. Due regard must be paid to the personal circumstances and subjective factors that might have influenced the accused person’s conduct, and these factors must then be weighed with the main objectives of punishment, which have been held to be: deterrence, prevention, reformation and retribution. In this process any relevant considerations should receive the most scrupulous care and reasoned attention, and the death sentence should only be imposed in the most exceptional cases, where there is no reasonable prospect of reformation and the objects of punishment would not be properly achieved by any other sentence.”
15. While the Court acknowledges the Accused’s status as a first offender and his expression of remorse, it must also weigh the aggravating factors:
 - a. The heinous nature of the offence, involving a deep cut that severed the jugular vein and carotid artery, causing instant death.
 - b. The violent manner in which the offence was committed.
 - c. The fact that the Accused was found at the scene, and DNA evidence directly linked him to the murder weapon and blood-stained clothing.



16. The Sentencing Policy Guidelines [2023] provide that a custodial sentence is necessary where the crime is serious and poses a threat to public safety, while rehabilitation remains a relevant goal even for offenders found guilty of grave crimes. Having carefully considered all relevant factors, this court determines that a substantial custodial sentence is warranted to reflect the gravity of the offence, provide appropriate retribution, deter others from engaging in similar conduct, and protect the community from the risk posed by the offenders.
17. Accordingly, I hereby sentence the Accused person herein Simon Nyongesa to life imprisonment. 14 days right of appeal explained.
18. This decision was duly delivered on the 30th July 2025 but referred to us by the liaison officer Prisons Mr. Odongo for typo errors which we have duly corrected. Any inconvenience is highly regretted. With that it has been reposted to the Kenya Law Reports and the CTS.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 30TH DAY OF JULY 2025 BUT AMENDED 15TH AUGUST 2025. FOR PURPOSES OF APPEAL THE AMENDMENT DATE TAKES PRIORITY.

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R. NYAKUNDI

JUDGE

