



**Republic v Ismail (Criminal Case 5 of 2016) [2024] KEHC 7523 (KLR) (24 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 7523 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE 5 OF 2016**

**JN ONYIEGO, J**

**JUNE 24, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**NOOR AHMED ISMAIL ..... ACCUSED**

**SENTENCE**

1. Accused person was charged with the offence of murder contrary to section 203 as read out with section 204 of the penal code. Particulars are that on 12<sup>th</sup> May 2016 at Kotulo sub location of Tarbaj sub county within Wajir county he murdered Noor Ahmed.
2. Having pleaded not guilty, the matter proceeded to full trial. Consequently, he was found guilty and convicted accordingly. Subsequently, a pre-sentence report was ordered for. Vide a pre-sentence report dated 7<sup>th</sup> June 2024, the community described the accused as a good person being a religious leader. They however condemned the act he committed hence recommended that he be held in custody as the community is hostile. The victim’s family expressed bitterness and recommended harsh sentence. The report however recommended for a lenient sentence
3. In mitigation, the accused pleaded for mercy on grounds that he is a family man with 8 children; he is a widower and the sole breadwinner; he is willing to undergo counselling services.
4. The victim’s family filed submissions through the firm of Kusow Advocates urging the court to subject the accused to death penalty citing the case of Republic v Joseph Kuria Irungu alias Jowi and another high court criminal case number 51 of 2018 where justice Nzioka sentenced the accused to death after considering the inhuman manner in which death of the complainant was executed hence the need for deterrent sentence.
5. Counsel pleaded in the alternative, a sentence of 30 years should the court find death penalty not appropriate. Generally, it was counsel’s submission that the court should be guided by the judiciary sentencing policy guide lines to arrive at the appropriate sentence.



6. It is trite that sentencing is at the discretion of the trial court. See *Kipkoech Kogo v R.* Eldoret Criminal Appeal No.253 of 2003 where the Court of Appeal stated thus:-

“sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also *Sayeka v R.* [1989 KLR 306]”

7. Similar position was stated by the court of appeal in *Bernard Kimani Gacheru v Republic* [2002] eKLR where it was stated that:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

8. In Garissa high court criminal case number 3 of 2018, between *Republic v Ismail Ali Kiai and another*, Aroni J sentenced the accused persons charged with murder to 15 years imprisonment on account that the same served as deterrent measure.

9. It is however worth noting that in exercise of its discretion, a court is duty bound to take into consideration certain guiding principles interalia; the aggravating nature of the offence committed; the mitigating factors; pre-sentence report; previous criminal record of the accused; and victim impact assessment report. See *judiciary sentencing policy guidelines* clause 4.5 of 2023.

10. This court is pretty aware of the objectives of sentencing which are also captured in the judiciary sentencing policy guidelines clause 1.3.1 of 2023 as; retribution, deterrence, rehabilitation, restorative justice, community protection, denunciation, reconciliation and reintegration.

11. I have considered the seriousness of the offence and the mitigation on record. The offence committed is serious which carries a maximum sentence of death. However, considering the pre-sentence report which is favourable and further considering the mitigation on record, I do not find death penalty appropriate. Accordingly, accused is sentenced to serve 12 years imprisonment less 3 years and 7 months being the period spent in remand custody.

ROA 14 days

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 24TH DAY OF JUNE 2024**

**J. N. ONYIEGO**  
**JUDGE**

