Republic v Jibo (Criminal Case E006 of 2023)
[2024] KEHC 13271 (KLR) (30 October 2024) (Ruling)

Neutral citation: [2024] KEHC 13271 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT GARISSA

CRIMINAL CASE E006 OF 2023

JN ONYIEGO, J

OCTOBER 30, 2024

BETWEEN

REPUBLIC ..... PROSECUTOR

AND

OSMAN ALI JIBO ..... ACCUSED

RULING

1. Accused person is charged with the offence of murder contrary to section 203 as read with Section 204 of the penal code. Particulars are that on 31st day of March 2023, at Bula Vango area, within Madogo Location, Bangale Sub -County within River Tana County, he murdered Hassan Shide.

2. Having returned a plea of not guilty, the matter proceeded to full trial consequences whereof he was found guilty and subsequently the court ordered for a pre-sentence report.

3. According to the report, the accused is remorseful having conceded that he committed the offence out of a quarrel with the deceased. That the commission of the offence was culminated by a land dispute. The report has however recommended a non-custodial sentence considering the gravity of the offence and that the community is receptive.

4. On his mitigation, he pleaded for leniency claiming that he was the sole breadwinner to his family. He further stated that he acted on the heat of the moment and that his family has since reconciled with the victim's family.

5. It is trite that sentencing is at the discretion of the trial court. See Kipkoech Kogo - vs - 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 – vs- R. (1989 KLR 306)"

6. Similar position was stated by the court of appeal in Bernard Kimani Gacheru vs. 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."

7. 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.

8. 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.

9. I have carefully considered the circumstances under which the offence was committed and the mitigation on record. I have also considered the sentiments contained in the pre-sentence report which is favourable. Accused person admitted the offence. He appeared remorseful. He is a first offender.

10. However, the offence committed is serious. There was no justification for him to have over-reacted simply because goats of a neighbor had strayed into his compound. Some innocent life was lost for no apparent reason. A deterrent sentence is necessary. Accordingly, I find the sentence of 15 years imprisonment appropriate

11. In meting out this sentence, I am mindful of the requirement of Section 333(2) of the CPC by taking into account the period spent in remand custody translating to 1 year 4 months and 20 days. Accordingly, accused is sentenced to serve 15 years imprisonment less the period spent in remand custody.

    ROA 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 30TH DAY OF OCTOBER 2024

J. N. ONYIEGO

JUDGE