



**Republic v Saidi (Criminal Case E045 of 2020)
[2023] KEHC 946 (KLR) (Crim) (20 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 946 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL CASE E045 OF 2020
DO OGEMBO, J
FEBRUARY 20, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ASMAN SAIDI ACCUSED

RULING

1. The accused herein was initially charged with Murder contrary to section 203 as read with section 204 of the *Penal Code*. Out of a plea bargaining process, he has pleaded guilty to the lesser offence of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. And has been convicted accordingly on his own plea of guilty. The accused has raised the following mitigation factors;
 - i. That he has fully cooperated with the investigators and the court.
 - ii. That he is a sole bread winner of his young family of 5 children who rely and depend on him.
 - iii. That in sentencing him, the court ought to balance his rights, the rights of the victims and the children.
 - iv. That the 2 families have since forgiven each other.
 - v. That he is a first offender and has been in custody since 2020 and he has been rehabilitated. He promises to be a law abiding citizen.
 - vi. He has pleaded for a non-custodial sentence based on his character since the time this incident occurred.



2. The prosecution, on the other hand, have urged for a custodial sentence to give dignity to the deceased and also that reflects the seriousness of the offence. It was also noted that the deceased died young at 30 years and that the incident is still fresh on the mind of the family members. That if released, the life of the accused would be in jeopardy.
3. Prior to the mitigation of the accused, this court obtained a probation officer pre-sentence and victim impact assessment report, filed herein on December 1, 2022. Salient in the said report are the following:
 - i. That the accused, prior to his arrest, was abusing and peddling drugs.
 - ii. That the accused had planned to kill the deceased, i.e “Kwa hii nyumba nitamaliza mtu.”
 - iii. The negative view about the accused by majority of his family members including his grandmother.
 - iv. The negative attitude of the family of the deceased who are opposed to non custodial sentence.
 - v. The negative attitude of the local community against any non custodial sentence on grounds that he is a threat to public safety.
4. The judiciary sentencing policy guidelines at paragraph 4.1 gives guides on the purpose and rationale of sentencing to be the following:
 - i. Retribution i.e to punish the offender for his or her criminal conduct in a just manner.
 - ii. Deterrence i.e to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 - iii. Rehabilitation, to enable the offender reform and become a law abiding person.
 - iv. Restoration justice to address the needs arising from the criminal conduct e.g loss and damages.
 - v. Community protection, to protect the community by incapacitating the offender.
 - vi. Denunciation, to communicate the community’s condemnation of the criminal conduct.
5. I have considered the circumstances of this case in which a young life was recklessly lost. I have also considered the mitigation of the accused and the response of the prosecution side by side the presentence and victim impact report filed herein. I am convinced in the circumstances that the accused deserves a deterrent custodial sentence as opposed to the plea made for non-custodial sentence. In the circumstance, I sentence the accused to serve 20 years imprisonment. Since the accused has been in custody pending determination of this case, this sentence shall run from December 10, 2020, the date the accused was first arraigned in court. The accused has 14 days right of appeal.

Orders accordingly.

D. O. OGEMBO



JUDGE

20TH FEBRUARY, 2023

Court:

6. Ruling read out in open court in the presence of the accused, Mr. Ratemo for the accused and Ms. Gikonyo for the state.

D. O. OGEMBO

JUDGE

20TH FEBRUARY, 2023

