



REPUBLIC OF KENYA



**Republic v Munyalo (Criminal Case E004 of 2021)
[2025] KEHC 106 (KLR) (15 January 2025) (Sentence)**

Neutral citation: [2025] KEHC 106 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E004 OF 2021
JN ONYIEGO, J
JANUARY 15, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MICHAEL MUNYOKI MUNYALO ACCUSED

SENTENCE

1. Michael Munyoki Munyalo the accused herein is charged with the offence of murder contrary to section 203 as read with Section 204 of the *Penal Code*. Particulars of the information are that on 16.05.2021 at Garissa Township, Garissa Township Sub County, within Garissa County he murdered Morris Kimathi Kaliunga.
2. Having pleaded not guilty to the charge, the prosecution called Nineteen (19) witnesses in support of its case. Upon conclusion of the trial, accused was convicted of a lesser charge of manslaughter. The court then ordered for a pre-sentence report which recommended for a non-custodial sentence. In the said report, it was indicated that the accused has reconciled with the victim's family. That the accused has paid the victim's family a sum of Kshs 700,000/= and that the victim's family is not opposed to the release of the accused on probation.
3. In mitigation, the accused pleaded for leniency on grounds that; he is a first offender; he has served the nation as a civil servant for close to 40 years; he has reconciled with the victim's family by compensating them with Kshs 700,000/=; the pre-sentence report is favourable; he is the sole breadwinner of his family and a person of good character who did not intend to cause death of the deceased.
4. Mr. Okemwa learned counsel for the prosecution appeared to support accused's sentiments and therefore endorsed the recommendation for a non- custodial sentence. I have considered the seriousness of the offence, circumstances under which the offence was committed, mitigation on record and the recommendation by the pre-sentence report.



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. The offence in question arose out of an argument between the deceased and the accused while drinking in a club. Obviously, it was not intended. However, the force applied and the manner in which the accused acted in the circumstances thereby shooting the deceased who was fleeing the scene of the incident was not acceptable.

10. Nevertheless, he is remorseful and a first offender who has since extended a hand of reconciliation to the family. The pre-sentence report is favourable. He has all along been cooperative in court attendance. These are all positive mitigating factors which goes a long way to persuade this court to impose a more lenient sentence. However, life was lost under circumstances that was not warranted taking into account that the deceased and the accused an OCS then were both hiding while drinking at odd hours against covid curfew rules then in place. In the circumstances, I find a sentence of five years imprisonment reasonable and commensurate to the offence committed. Accordingly, accused is sentenced to serve five years imprisonment.

ROA 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 15TH DAY OF JANUARY 2025.

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J. N. ONYIEGO



JUDGE

