



REPUBLIC OF KENYA



**KENYA LAW**  
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**Republic v Malim & another (Criminal Case E009 of 2021)  
[2025] KEHC 6334 (KLR) (20 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 6334 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E009 OF 2021  
JN ONYIEGO, J  
MARCH 20, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MAHAD MAHAMUD MALIM ..... 1<sup>ST</sup> ACCUSED**

**ABDIRIZAK IDRIS ..... 2<sup>ND</sup> ACCUSED**

**SENTENCE**

1. The accused persons are charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence being that on 22.06.2022 at Boji area within Madogo Location, Tana River County they murdered Fundi Kalonzo.
2. Having pleaded not guilty, the matter proceeded to full trial with the prosecution calling eight (8) witnesses. Upon conclusion of the trial, accused were found guilty and convicted accordingly. The court then ordered for a pre-sentence report.
3. According to the pre-sentence report filed in court on 19-03-2025, accused were described as being remorseful and that they committed the offence due to poor anger management. That the victim's family has since forgiven the accused persons although they regret the loss of their dear one. It was further stated that the victim's family has been compensated with five hundred thousand shillings hence reconciled. The community attitude towards the accused has been described as positive and hence recommended for a non-custodial sentence.
4. In mitigation, the accused persons pleaded for leniency on grounds that; they are young aged below 25 years; they are first offenders; they have reconciled with the deceased's family.



5. It is trite law that sentencing is at the discretion of the trial court. See *Kipkoeb 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)”

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 considered the circumstances under which the offence was committed, positive pre-sentence report and the mitigation on record. Accused are remorseful. The offence committed was partly contributed by the deceased and his colleague.

10. Taking into consideration; the period the accused have spent in custody pending trial and that the three families have reconciled; accused persons are young and first offenders and very remorseful, I find imprisonment term of two years sufficient.

11. ROA 14 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 20<sup>TH</sup> DAY OF MARCH 2025**

**J. N. ONYIEGO**

**JUDGE**

