



**Republic v Muse (Criminal Case E007 of 2021)
[2025] KEHC 3468 (KLR) (20 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 3468 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E007 OF 2021
JN ONYIEGO, J
MARCH 20, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MOHAMUD ALI MUSE ACCUSED

SENTENCE

1. The accused person herein is charged of murder contrary to section 203 as with section 204 of the *Penal Code*. The particulars of the offence are that on 10th October 2021 at Ifo refugee camp within Dadaab Sub-County of Garissa County, he Murdered Fatuma Hassan Abdi.
2. He was arraigned before court and upon the charges being read to him, he pleaded not guilty hence a plea of not guilty entered. Upon conducting full trial, he was convicted of the offence. The court ordered for pre-sentence report which found him suitable for non-custodial sentence.
3. 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 v R. (1989 KLR 306)”



4. 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.”

5. 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.
6. 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.
7. I have considered the seriousness of the offence. Accused is a first offender and very remorseful. However, considering the brutal manner in which the complainant was murdered, a deterrent sentence is necessary.
8. Accordingly, accused is sentenced to serve 10 years imprisonment. In meting out this sentence I have taken into account the period spent in remand custody which is 3yrs and 3 months.

ROA 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 20TH DAY OF MARCH, 2025

J. N. ONYIEGO

JUDGE

