



**Republic v Nyaga ‘alias’ Samow (Criminal Case E008 of 2023)
[2025] KEHC 3426 (KLR) (20 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 3426 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E008 OF 2023
JN ONYIEGO, J
MARCH 20, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ANTHONY MURITHI NYAGA ‘ALIAS’ SAMOW ACCUSED

SENTENCE

1. The accused person herein, Anthony Murithi Nyaga ‘alias’ Samow is charged with the offence of murder contrary to Section 203 as read together with Section 204 of the, *Penal Code*.
2. The particulars of the offence are that on 23.05.2023 at Wangai Dahan Location in Mandera West Sub Location within Mandera County, he murdered Hassan Salat Mohamed. The prosecution called eleven (11) witnesses in support of its case. Upon conclusion of the trial, accused was 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 20-03-2025, accused is not suitable for non-custodial sentence. In mitigation, accused pleaded for leniency on grounds that; he is young and needs an opportunity to build society.
4. It is trite that sentencing is at the discretion of the trial court. See Kipkoech 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)”



5. 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.”

6. 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.
7. 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.
8. I have considered the circumstances under which the offence was committed, negative pre-sentence report and the mitigation on record. Accused is not remorseful. The offence committed is very serious. The manner and style in which the offence was committed was brutal and inhuman. Accused abused his employer’s trust. He cut off his source of income. He deserves a deterrent sentence. Accordingly, accused is sentenced to serve 30 years imprisonment less 1 year and 9 months being the period he spent in remand custody

ROA 14 days.

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

J. N. ONYIEGO

JUDGE

