



Republic v Yussuf (Criminal Case 3 of 2023) [2025] KEHC 2391 (KLR) (7 March 2025) (Sentence)

Neutral citation: [2025] KEHC 2391 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MANDERA**

CRIMINAL CASE 3 OF 2023

JN ONYIEGO, J

MARCH 7, 2025

(FORMERLY MARSABIT HIGH COURT CRIMINAL CASE NO.8 OF 2020)

BETWEEN

REPUBLIC PROSECUTOR

AND

MOHAMED NOOR ABDIRAHMAN YUSSUF ACCUSED

SENTENCE

1. Accused person is charged with the offence of murder contrary to Section 203 as read out with section 204 of the *penal code*. Particulars are that on 10.07.2020 at corner B Estate in Mandera Town, Mandera East Sub-County within Mandera County he murdered one Martin Muriuki Kiriti.
2. Having pleaded not guilty, the matter proceeded to full trial with the prosecution calling five witnesses. 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 05-03-2025, accused was described as being remorseful although he denied committing the offence. That the victim's family has since forgiven the accused although they regret loss of their dear one. The community attitude towards the accused was described as positive and recommended for a non-custodial sentence.
4. Finally, it was revealed that the accused's family has reconciled with the deceased's family with the accused's family promising to compensate the victim's family with one million payable in two instalments on condition that the court releases the accused on non-custodial sentence. According to the report, accused is suitable for non-custodial sentence.
5. In mitigation, accused pleaded for leniency on grounds that; he is young aged 31 years; he has a wife and two young children who depend on him as the sole breadwinner; he is a first offender; he has reconciled with the deceased's family and had offered to compensate the said family with Kes one million on



condition that he is released on non-custodial sentence which the probation department has found him suitable for.

6. 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)”

7. 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.”

8. 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.

9. 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.

10. I have considered the circumstances under which the offence was committed, positive pre-sentence report and the mitigation on record. Accused is remorseful. The offence committed was unwarranted in the circumstances. How could the accused wake up one morning and decide that he wanted to kill and drink somebody’s blood. Precious life was lost out of an intentional unlawful act of the deceased.

11. No amount of compensation would adequately compensate the loss of human life. A human being is not an animal for slaughter for one to drink blood. A deterrent sentence is necessary in the circumstances. Accordingly, accused is sentenced to serve 15 years’ imprisonment.

ROA 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 7TH DAY OF MARCH 2025

J. N. ONYIEGO

JUDGE

