



REPUBLIC OF KENYA



**Republic v Duale & another (Criminal Case E007 of 2022)
[2025] KEHC 5957 (KLR) (13 May 2025) (Sentence)**

Neutral citation: [2025] KEHC 5957 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E007 OF 2022
JN ONYIEGO, J
MAY 13, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ABDULLAHI HASSAN DUALE 1ST ACCUSED

RASHID IBRAHIM ABDI 2ND ACCUSED

SENTENCE

1. The accused person herein with another are jointly charged with with two counts of murder contrary to Section 203 as read together with Section 204 of the, *Penal Code*. The particulars in respect of count I are that; on 01.02.2022 at Bulla Towfiq area in Garisaa Sub County, within Garissa County, jointly with others not before the court unlawfully murdered Abdi Yerrow Ibrahim.
2. In respect to count II, particulars are that; on 01.02.2022, at Bulla Towfiq area in Garisaa Sub County, within Garissa County, jointly with others not before the court unlawfully murdered Ibrahim Diriye Absha.
3. Having pleaded not guilty, the prosecution called ten (10) witnesses in support of their case. The court however found the second accused innocent and acquitted him accordingly. Accused one was convicted of both counts. Subsequently, the court ordered for a pre-sentence report.
4. According to the pre-sentence report filed in court on 13 May, 2025, accused is not suitable for non-custodial sentence due to hostility of the victim's family and the underlying clan clashes.
5. In mitigation, accused pleaded for leniency on grounds that; he is remorseful; and he is the sole breadwinner of his family.



6. 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)”

7. 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.”

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, the pre-sentence report and the mitigation on record. Accused does not appear to be remorseful. The offence committed is serious. A deterrent sentence is necessary. Accordingly, the accused is sentenced to serve 20 years imprisonment for each count. The same to run concurrently.

ROA 14 days

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 13TH DAY OF MAY 2025

J. N. ONYIEGO

JUDGE

