



**Republic v Mohamed & another (Criminal Case E011 of 2022)  
[2024] KEHC 1227 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1227 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E011 OF 2022  
JN ONYIEGO, J  
FEBRUARY 15, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**IFTIN HASSAN MOHAMED ..... 1<sup>ST</sup> ACCUSED**

**ELMI ABDULLAHI ..... 2<sup>ND</sup> ACCUSED**

**RULING**

1. Accused persons were jointly charged with two counts of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Count I, particulars are that on 4<sup>th</sup> June 2022 at Sarif Town Centre, in Habaswein Sub County within Wajir County jointly with others not before Court unlawfully murdered one Abdirahman Adan Hassan.
2. Count II, particulars are that on 4<sup>th</sup> June, 2022 at Sarif Town Centre, in Habaswein Sub-County within Wajir County jointly with others not before Court unlawfully murdered one Jamal Dekow Abdi.
3. Having pleaded not guilty, the Court listed the matter for hearing. However, before the matter could proceed for hearing, parties agreed to enter into a plea bargaining agreement which was signed on 21.11.2023. Consequently, they proceeded to plead guilty to a lesser charge of manslaughter on 31.1.24.
4. Subsequently, the Probation Officer filed a pre-sentence report dated 6<sup>th</sup> February 2024 thus recommending three years' probation period. The report indicated that the victim's family and those of the accused persons are neighbours and that the accused persons' respective families had given the victims' families 100 camels each as compensation for the death of the deceased persons.



5. From the facts of the case and the probation report, the victims and the accused herein had on the material day attended a preliminary MCA election exercise when they clashed leading to a fight which gave rise to the stabbing of the deceased hence their death.
6. I have considered the mitigation on record in particular the age of the accused, vis a vis the 2016 judiciary guidelines on sentencing policy which provides among other factors a court must consider during sentencing as the gravity of the offence committed. I have also considered the circumstances under which the offence was committed.
7. The offence committed herein is a serious one which carries a maximum penalty of life imprisonment. However, I am aware that sentencing is at the discretion of the Court and that the same should not be applied capriciously or whimsically. See *Christopher Ochieng v R* (2018)eKLR.
8. I have given due consideration of the age of the accused persons who are aged less than 25 years having been born in 2001 and 2002 respectively. Although the families have reconciled, the manner in which the stabbing was planned and executed was cruel and a custodial sentence is necessary. In order to give the young men a chance to reform, a shorter sentence in custody shall suffice to also serve as a lesson to the society.
9. Taking into account the period the accused persons have spent in remand custody and further considering that the affected families have reconciled, a sentence of two years' imprisonment for each accused for each count to run concurrently shall suffice.

Right of appeal of 14 days.

**DATED, SIGNED AND DELIVERED THIS 15<sup>TH</sup> DAY OF FEBRUARY, 2024**

**J. N. ONYIEGO**

**JUDGE**

