



**Republic v Moulid (Criminal Case 6 of 2019) [2024] KEHC 5630 (KLR) (23 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 5630 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE 6 OF 2019**

**JN ONYIEGO, J**

**MAY 23, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**ABDI HASSAN MOULID ..... ACCUSED**

**SENTENCE**

1. The accused person herein was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence are that on 29.03.2019 at around 1100hrs at Bulla Suthi village in Daadab Sub County within Garissa County he murdered one Isnino Ismail Abdullahi.
2. Having returned a plea of not guilty, the matter proceeded to full trial. Accused was eventually found guilty and convicted accordingly. Before pronouncing sentence, the court requested for a pre-sentence report. The said report dated 21<sup>st</sup> May 2024 was then filed thus dis-recommending non-custodial sentence on grounds that the community is still bitter. The report states that during the interview of the accused, he pleaded for leniency while claiming that he was remorseful hence pleaded for non-custodial sentence. As to the victims' family, they expressed bitterness towards the accused besides lamenting that it had taken too long to finalize this matter and that justice will be seen to be done only if the accused was to serve a custodial sentence.
3. Further interrogation established that the accused was a refugee hosted at Ifo refugee camp in Dadaab and that his family has since re-located back to Somalia hence he has no known relative in Kenya nor place of fixed abode.
4. In mitigation, accused pleaded with the court to treat him with leniency while expressing remorse. He also invited the court to take into account the period of about 5 years spent in remand custody and that he was badly beaten during his arrest.



5. 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)”

6. 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.”

7. 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.

8. 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.

9. I have taken into account the cruel manner in which the life of the innocent woman was cut short. There was no justification at all. Simply because she resisted sexual assault, she had to lose her life. Accused is not remorseful at all. The pre -sentence report is not favourable. A deterrent sentence is necessary to serve as a lesson to others. However, I have taken note of the period he has been in custody since 04-06-2019 to date translating to 4 years and 11 months 18 days. Accordingly, accused is sentenced to serve 20 years’ imprisonment less the period spent in remand custody.

ROA 14 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 23<sup>RD</sup> DAY OF MAY 2024**

**J. N. ONYIEGO**

**JUDGE**

