



**Republic v Osman (Criminal Case E015 of 2022)  
[2024] KEHC 5636 (KLR) (23 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 5636 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E015 OF 2022**

**JN ONYIEGO, J**

**MAY 23, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MAAWIYE MOHAMED OSMAN ..... ACCUSED**

**SENTENCE**

1. Accused herein was originally charged with the offence of murder contrary to section 203 as read with Section 204 of the *penal code*. Particulars were that on 29<sup>th</sup> August 2022 at Bulla Punda within Garissa County unlawfully murdered Sundesh Abdinajib. Upon arraignment in court the mental assessment report dated 12-09-2022 indicated that accused was not fit mentally to plead to the charge. He was then taken to Mathari mental hospital where he underwent treatment until 18-04-23 when he was certified fit to stand trial. He denied the charge and then the matter was fixed for trial.
2. Having Killed his sister’s baby then aged three years old, the family engaged into negotiation to settle the matter for the sake of cohesion in the family. The said negotiations yielded to the signing of a plea bargaining agreement dated 11-04-2024 in which the accused agreed to plead guilty to the charge of manslaughter contrary to section 202 as read with section 204 of the *penal code*. This was informed from the point of view that the accused killed the deceased by kicking him after fighting with the sister (mother to the deceased). That the accused was not in his right frame of mind hence had no malice of a forethought.
3. Having pleaded guilty to the offence of manslaughter, the court ordered for pre-bail report. The report dated 21-05-24 recommended a three-year probation period during which period he shall undergo counselling services and monitoring on how to manage anger. According to the report, the sister to the accused and mother to the deceased had forgiven the accused as they concentrate in treating both the accused and their ailing mother. As to the community, they blamed mental illness of the accused hence had forgiven him.



4. On his mitigation, he pleaded for mercy urging that he did not commit the offence intentionally as he was not mentally stable. He regretted the incident and pleaded for mercy.
5. 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)”

6. 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.”

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 carefully considered the circumstances under which the offence was committed and the mitigation on record. I have also considered the sentiments contained in the pre-sentence report which is favourable. The offence involves family members who have since forgiven each other. The accused was not possessed of any malice at the time of commission of the offence perhaps because he was not properly in his right frame of mind. To instill a custodial sentence will cause more pain in the family hence a non-custodial sentence is appropriate in the circumstances.
10. Accordingly, accused is sentenced to serve 3 years’ probation period. During that period, he shall be subjected to counselling by the family while observing monthly regular supervision by the probation office.

ROA 14 days.

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

**J. N. ONYIEGO**

**JUDGE**

