



**Republic v Muhumed (Criminal Case E016 of 2022)
[2024] KEHC 4713 (KLR) (8 May 2024) (Sentence)**

Neutral citation: [2024] KEHC 4713 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E016 OF 2022**

JN ONYIEGO, J

MAY 8, 2024

BETWEEN

REPUBLIC PROSECUTION

AND

ISSACK ABDI MUHUMED ACCUSED

SENTENCE

1. Accused person herein was originally charged with the offence of Murder contrary to Section 203 as read with section 204 of the *Penal Code*. Upon engagement and negotiation between the victims’ family and that of the accused in conjunction with the guidance of the defence and prosecution counsel, a plea-bargaining agreement was arrived at and subsequently executed by both parties on 6th December 2023. In the said agreement which involved both families forgiving each other and some bit of compensation to the victim’s family, the accused agreed to plead guilty to committing a lesser charge of manslaughter contrary to section 202 as read with section 205 of the penal code. He subsequently pleaded guilty on 14th March 2024 and accordingly got convicted the same day.
2. According to the prosecution record, accused is a first offender. On his mitigation, he prayed for leniency thus expressing remorse. He invited the court to consider circumstances under which the offence was committed and that he had quarreled with the deceased before a fight ensued leading to the injuries that resulted to the death of the deceased. He urged the court to consider the fact that both families had forgiven each other after compensating the victim’s family.
3. From the facts of the case, the deceased and the accused person were on the material day at some hotel taking tea together when a quarrel ensued thus causing the accused to pick a panga nearby, cut the deceased and then disappeared.



4. 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)”

5. 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.”

6. 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.
7. 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.
8. In the instant case the pre-sentence report painted a picture of accused person being a good man who committed the offence out of poor anger management. That the two families have since reconciled and forgiven each other after some form of compensation was made. That the community is receptive to the accused joining them as the offence was not intended.
9. Taking into account circumstances under which the offence herein was committed and the mitigating factors on record, and further, taking into account that the affected families have since forgiven each other, am of the view that a more lenient sentence is necessary. At the same time there is need to balance societal interests for the accused to learn some lesson for his own actions and that, plea bargaining is not necessarily an escape door from total liability but a mitigating factor. I am however a live to the fact that the accused has been in custody from 12th October 2022 up to now translating to 1 year 6 months and 24 days which should be taken into account when computing sentence pursuant to Section 333(2) of the *CPC*.
10. Considering the maximum penalty of life imprisonment provided for against the charge of manslaughter and having considered the period spent in remand custody and the effort made towards reconciliation by the two families, I find the sentence of two years imprisonment appropriate. Accordingly, the accused shall serve a period of two years in jail commencing from the date of this sentence exclusive of the period spent in remand custody.



ROA 14 DAYS

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 8TH DAY OF MAY 2024.

J.N.ONYIEGO

JUDGE

