



REPUBLIC OF KENYA



**Republic v Hassan (Criminal Case E001 of 2023)  
[2024] KEHC 6976 (KLR) (13 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 6976 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E001 OF 2023  
JN ONYIEGO, J  
JUNE 13, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**FATUMA IMAM HASSAN ..... ACCUSED**

**SENTENCE**

1. Accused person was charged with the offence of murder contrary to section 203 as read with section 204 of the *penal code*. Particulars are that on 11<sup>th</sup> day of January 2023 at Dulgub Location, in Habaswein Sub-County unlawfully murdered one Jamila Adow Said. Upon arraignment before court, it turned out that she was not mentally fit to stand trial. She was subsequently referred to mathari mental hospital on 27-03-23. Vide a letter dated 27<sup>th</sup> July 2023, mathari hospital certified her fit to stand trial.
2. Subsequently, she pleaded not guilty to the charge. Before hearing could commence, accused entered into a plea bargaining agreement with the prosecution on 24<sup>th</sup> April 2024 in which she pleaded guilty to a lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the *penal code*. Before sentence, the court ordered for pre-sentence report.
3. Vide a pre-sentence report dated 6<sup>th</sup> June 2024, the accused was declared suitable for probation period of three years. The report indicated that the victim's family and that of the accused had forgiven each other being relatives on grounds that the deceased was a mother in-law to the accused. The community is also receptive and looking forward to receiving the accused back to society.
4. In mitigation, she pleaded for leniency claiming that; she was remorseful; she has 9 children; she has suffered mental illness for over ten years as a result of which she was chained in both legs and hands causing bodily injuries; she has been in custody since 2023; the deceased was her mother in-law and that the victims' family and the accused's family had forgiven each other.



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 she was not properly in her 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, she shall be subjected to counselling by the family while observing monthly regular supervision by the probation office and seek necessary medical treatment.

ROA 14 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 13<sup>TH</sup> DAY OF JUNE 2024.**

**J. N. ONYIEGO**

**JUDGE**

