



**Republic v Dokota (Criminal Case E003 of 2021)
[2024] KEHC 8855 (KLR) (22 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 8855 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E003 OF 2021**

**JN ONYIEGO, J
JULY 22, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

ABDI OMAR DOKOTA ACCUSED

SENTENCE

1. Accused person is charged with the offence of murder contrary to section 203 as read with Section 204 of the *Penal Code*. Particulars are that on 26-04 -2021 at Malkansa area, Saka Location within Tana River county, he murdered Issa Adan Roba. Having pleaded not guilty, the matter proceeded to full trial. Consequently, accused was found guilty and convicted accordingly.
2. Subsequently, the court ordered for a pre- sentence report before mitigation and sentence. According to the pre-sentence report dated 12th July 2024, the accused was described as suitable for non-custodial sentence. The report painted a positive picture of accused person being a good person whom the community has no problem being released to society. As to the victim’s family they have reconciled with the accused being their son in-law. The two families have since entered into a compensation agreement of Kshs 300,000/=, a cow and sheep out of which Kshs 230, 000/= have been paid together with the cow and sheep.
3. In mitigation, accused prayed for leniency claiming that he has since reformed while in prison custody. He reiterated the content of the pre-sentence report thus urging that he deserves a non-custodial sentence since he has reconciled with his in-laws whom he has compensated.
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. I have considered the seriousness of the offence herein which carries a maximum penalty of death. I have also considered the mitigation on record and that the accused is a first offender. Further, I have taken into consideration the fact that the two families have since reconciled and that accused is a son in-law to the victim’s family. However, the attack on the deceased was unwarranted. A deterrent sentence is necessary. Accordingly, accused is sentenced to serve 15 years imprisonment less 3 years and 3 months spent in remand custody.

ROA 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 22ND DAY OF JULY 2024

J. N. ONYIEGO

JUDGE

