



**Republic v Kimanzi (Criminal Case E008 of 2022)
[2024] KEHC 8561 (KLR) (17 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 8561 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E008 OF 2022**

**JN ONYIEGO, J
JULY 17, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

JULIUS KIMANZI ACCUSED

SENTENCE

1. Accused person is charged with the offence of murder contrary to section 203 as read out with Section 204 of the penal code. Particulars are that on 25th march 2022 in Mororo shopping center, within Madogo Division within Tana River County unlawfully murdered one Samuel Muthangia.
2. Having returned a plea of not guilty, the matter proceeded to full trial. Upon conclusion of the trial, accused was found guilty and convicted accordingly. Consequently, the court requested for a pre-sentence report before mitigation and sentence. According to the report dated 4th July 2024, accused is known to be a good person; he is married and is a father of one child; has good reputation in prison; victim’s family and accused’s family have since reconciled and partial compensation made in accordance with Kamba traditions. The report however, painted the accused as a person who is suffering from anger management and drunkenness.
3. In mitigation, he pleaded for leniency. He pleaded that he is a first offender and the sole bread winner to his family. He urged the court to place him on probation so that he can integrate with society.
4. It is trite that sentencing is at the discretion of the trial court. See *Kipkoeb 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. From the evidence on record, it is apparent that the accused and the deceased fought in a bar after arguing over the accused’s refusal to buy the deceased beer. It came out clearly from the evidence that the deceased was the one who started the fight culminating to him being assaulted hence his death. The accused was acting in self defence hence not solely to blame for what befell the deceased. Accused is a young man age 32 years. He needs an opportunity to reform. He is remorseful. Probation report is favourable.
9. Taking into account the circumstances surrounding the commission of the offence, I find a sentence of one-year imprisonment appropriate. Considering that the accused had spent one month 14 days in custody before being released on bond, he shall serve the sentence pronounced less one month 14 days.
ROA 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT GARISSA THIS 17TH DAY OF JULY 2024

J. N. ONYIEGO

JUDGE

