



**Republic v Nunow (Criminal Case E005 of 2022)
[2024] KEHC 8592 (KLR) (17 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 8592 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E005 OF 2022**

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

BETWEEN

REPUBLIC PROSECUTOR

AND

ABDIMAJID MOHAMMED NUNOW 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 19th February 2022 at around 1500 hours at Meta meta Market in Mandera East Sub county within Mandera county he murdered one Ali Hassan Jillo. Having denied the charge, the matter proceeded to trial.
2. After the closure of the prosecution case, accused was put on his defence. However, before the accused could tender his defence, he entered into a plea bargaining agreement to which he pleaded guilty to a lesser charge of manslaughter. Consequently, he was convicted and the court sought a pre-sentence report before mitigation and sentence.
3. The report dated 25th June 2024 indicated that the father to the deceased had entered into an agreement with the accused’s family for compensation to the tune of kshs 2,200,000 to which he was paid kes 600,0000 as down payment albeit opposition from a section of the family members who felt that they were not consulted.
4. The report indicated that the community and the local administration were receptive to the release of the accused whom they described as a disciplined person. The report thus recommended a three-year probation period.
5. In mitigation, the accused pleaded for leniency. That he was a good friend to the deceased before they differed and fought. He stated that he was remorseful; he has made partial compensation and was ready to make peace with the victim’s family. He sought a non custodial sentence.



6. Mr. Owade watching brief for the family of the victim opposed any attempt to place the accused on probation. That the general consensus is for justice to be done through imposing a non-custodial sentence. Mr. Kihara for the state also reiterated the stand taken by the family thus urging the court to impose a deterrent sentence.
7. 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)”
8. 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 stated is shown to exist.”
9. It is however worth noting that in exercise of its discretion, a court is duty bound to take into consideration certain guiding principles *inter alia*; 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.
10. 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.
11. 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 in question arose out of an argument between the deceased and the accused. Obviously, it was not intended. However, the force applied and manner in which the accused acted in the circumstances thereby stabbing the deceased with a knife on the neck was unwarranted and unacceptable.
12. Although he pleaded guilty to a lesser charge of manslaughter thus saving the court precious time, and further despite some partial settlement being done, some form of retribution is necessary. Accordingly, he is sentenced to serve 8 years imprisonment less 2 years and 4 months being the period spent in remand custody pursuant to Section 333(2) of the [CPC](#).

ROA 14 days.

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



J. N. ONYIEGO

JUDGE

