



**Republic v Muhumed (Criminal Case E003 of 2022)  
[2024] KEHC 8174 (KLR) (4 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 8174 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E003 OF 2022**

**JN ONYIEGO, J**

**JULY 4, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**AHMED MOHAMED MUHUMED ..... ACCUSED**

**SENTENCE**

1. The accused herein is charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal code. The particulars of the said offence being that on 01.11.2021 at Athinasyar village in Bullagolol location in Bura East Sub County within Garissa County murdered Ismail Dubow Hassan.
2. Upon arraignment before court, he pleaded not guilty and the case proceeded to full trial in which case the prosecution called a total of seven (7) witnesses to prove its case. Upon conclusion of the hearing, the court convicted the accused and thereafter ordered for pre-sentence report.
3. According to the pre-sentence report filed on 20<sup>th</sup> June 2024, accused was not remorseful and that he was still in denial. The victim’s family was bitter and does not want anything to do with reconciliation. The community described the accused as a violent and unpredictable person. That he is a threat to the community and his family. In conclusion, the report recommended that accused is not suitable for lenient sentence.
4. In mitigation, the accused pleaded for leniency claiming that he is 80 years old and has been in custody since the date of his arrest hence has reformed and therefore needs a chance to integrate with society. He claimed that he is sick suffering from ulcers and high blood pressure and therefore played for a non-custodial sentence.



5. It is trite that sentencing is at the discretion of the trial court. See Kipkoech Kogo - vs - 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 – vs- R. (1989 KLR 306)”

6. Similar position was stated by the court of appeal in Bernard Kimani Gacheru vs. 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 considered the seriousness of the offence committed and the brutal manner in which it was executed. Accused person is not remorseful. I have taken into account his age at 63 years. In my view, accused does not deserve leniency. The casual manner in which people use guns in this region to kill others is alarming. A deterrent sentence is necessary. Accused is sentenced to serve 20 years less 2 years, 4 months and 20 days being the period spent in remand custody from 14-02-2022 pursuant to section 333(2) of the CPC.

Right of appeal 14 days.

DATED, SIGNED AND DELIVERED, IN OPEN COURT THIS 4<sup>TH</sup> DAY OF JULY 2024

**J.N. ONYIEGO**

**JUDGE**

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