



**Republic v Shimole (Criminal Case E010 of 2021)
[2024] KEHC 8176 (KLR) (4 July 2024) (Sentence)**

Neutral citation: [2024] KEHC 8176 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E010 OF 2021**

JN ONYIEGO, J

JULY 4, 2024

BETWEEN

REPUBLIC PROSECUTOR

AND

MOHAMED HAMISI SHIMOLE ACCUSED

SENTENCE

1. The accused person herein was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on 04.12.2021 at Balambala Location, Balambala Sub – County within Garissa County he murdered Idriss Salim Hama.
2. The accused having pleaded not guilty to the charge, prosecution called five witnesses in its endeavour to prove its case against him. 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 20th June 2024, the accused has a good reputation in the community. That his family supported the victim’s family to meet burial expenses of the deceased. The deceased’s family is bitter but amenable to reconciliation. The report recommended a lenient sentence.
4. In mitigation, the accused pleaded for leniency claiming that he has been in custody since 2021 hence he has reformed and therefore needs a chance to integrate with society. He therefore played for a non-custodial sentence.
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. Having taken into account the circumstances under which the offence was committed, there was no justification at all to warrant what the accused did. Although remorseful, a deterrent sentence is necessary to serve as a lesson to the others. However, having considered that he was charged on 21-02-21 and has been in custody since then, the court is duty bound under section 333(2) of the *CPC*, to consider that period. Accordingly, accused is sentenced to serve 20 years imprisonment less the period spent in remand custody which is 3years, 4 months and 17 days.

Right of appeal 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 4TH DAY OF JULY 2024

J.N. ONYIEGO

JUDGE

