



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Sheik (Criminal Case E005 of 2021)
[2024] KEHC 15323 (KLR) (4 December 2024) (Sentence)**

Neutral citation: [2024] KEHC 15323 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E005 OF 2021
JN ONYIEGO, J
DECEMBER 4, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

RASHID NOOR SHEIK ACCUSED

SENTENCE

1. Accused person was charged with the offence of murder contrary to Section 203 as read out with Section 204 of the *Penal Code*. Particulars states that on 6th day of June 2021 at Banane Kokar in liboi sub-county, he unlawfully murdered Mahat Noor Sheikh.
2. Having pleaded not guilty, the murder commenced hearing. However, the accused entered into a plea bargaining agreement to which he pleaded guilty to a lesser charge of manslaughter. The court then ordered for a pre-sentence report which did not recommend for a non-custodial sentence. The negative report basically stated that the accused's family is against his release. The community does not want him. The report painted a completely negative report about the accused.
3. In his mitigation, he pleaded that he was sorry for what he did. He blamed his sickness for what happened.
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 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.”

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. Having considered the circumstances under which the offence was committed, mitigation on record and pre-sentence report, and further considering the fact that he saved court’s time in pleading guilty, a deterrent sentence necessary. Accordingly, accused is sentenced to serve 10 years imprisonment.

ROA 14 days.

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

J. N. ONYIEGO

JUDGE

