

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT GARISSA**  
**CRIMINAL CASE NO. E001 OF 2024**

**REPUBLIC** .....

.....**PROSECUTOR**

**VS**

**MOHAMED** **ISSACK**

**HASSAN**.....**ACCUSED**

**RULING ON SENTENCE**

1. The accused person is charged with offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence are that on or about 04.03.2024 at Elwak Township in Mandera Central Sub-County within Mandera County he murdered Paul Munini Muteti.
2. Having pleaded not guilty, the prosecution called six (6) witnesses in support of their case.
3. When the accused was placed on his defence, he tendered his testimony without calling any witness. Upon close of the defence case, the court delivered its judgment thus convicting him of the offence charged. Subsequently, the court ordered for a pre-sentence report.
4. According to the pre-sentence report filed in court on 8<sup>th</sup> October, 2025, the accused's family stated that the accused had previously been attacked by bandits and had developed a mental illness. The family requested the court to consider mental assessment before delivering its sentence. That due to several bullet wounds he suffered, he may not survive in cold environment hence the court should not send him to prison. The victim's family through his brother and mother expressed bitterness and prayed for justice to be done. The community through its Ass-chief recommended accused be placed on non-custodial sentence. The investigating

officer described the accused as a ruthless person who deserves a jail term.

5. In mitigation, counsel for the accused pleaded for leniency on grounds that; he is a first offender; he dropped out of school due to sickness as he was attacked by bandits; he is the sole breadwinner for the family; he is remorseful; he has been in custody since 2024; he has learnt his lesson and pray for non-custodial sentence.

6. 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)”**

7. 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.”**

8. 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.
9. 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. On the other hand, prosecution pleaded for death penalty. Probation officer left the matter for the court to decide on the appropriate sentence.
10. I have considered the circumstances under which the offence was committed, pre-sentence report and the mitigation on record. The offence was committed at a traditional beer drinking den. Obviously, the environment was toxic out of the influence of alcohol. However, the accused is not remorseful given his continued stand of innocence. A family lost their loved one. Nothing would compensate them.
11. Taking into account the circumstances under which the offence was committed, I find a sentence of 15 years appropriate. In imposing that sentence, I have considered the period spent in custody since 20-06-204 translating to 1 year 3 months and 9 days.

ROA 14 days.

Dated, signed and delivered in open court this 9<sup>th</sup> day of October,  
2025

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**J. N. ONYIEGO**  
**JUDGE**