



**Republic v Ali & 2 others (Criminal Case E002 of 2024)
[2025] KEHC 15784 (KLR) (5 November 2025) (Sentence)**

Neutral citation: [2025] KEHC 15784 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MANDERA
CRIMINAL CASE E002 OF 2024
JN ONYIEGO, J
NOVEMBER 5, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ABDIWAHAB NOOR ALI 1ST ACCUSED

ABDIRAHAMAN ADAN IBRAHIM 2ND ACCUSED

YAHYA MAALIM ABDISHAKUR 3RD ACCUSED

SENTENCE

1. The accused persons herein are charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. Particulars of the offence are that on 20-09-2024 between 0200 hrs and 0300 hours at Kamor Location within Mandera East Sub-County, Mandera County, they jointly murdered Ahmed Hajjow aAhmed.
2. Having pleaded not guilty, the case proceeded to full trial with the prosecution calling ten (10) witnesses in support of its case thus inviting the court to make a finding whether the accused ought to be put on their defence or not. Upon analysing the evidence tendered, the court acquitted accused 2 and 3 under Section 306 of the CPC for lack of a case to answer. Consequently, accused one was put on his defence.
3. Upon conclusion of the trial, accused one was found guilty and convicted accordingly. The court then ordered for a pre-sentence report.
4. According to the pre-sentence report dated 4.10.2025, the accused has not shown any remorse or acceptance of the responsibility for the offence and his attitude reflects a lack of regret and concern for the consequences of his actions. The family of the deceased strongly oppose the accused being considered for a non-custodial sentence; expressed deep pain and dissatisfaction over the loss of their



loved one and that the offender should face the full course of justice. The community on the other hand, expressed concern that tensions within the community remain high following the incident and his release could lead to further unrest.

5. In mitigation, the accused person pleaded for leniency on grounds that; he is a victim of circumstances in that he was found in possession of a phone to a debtor to the deceased leading to a fight; the offence was not premeditated; he was 24 years old when the offence was committed hence unable to control his immaturity and emotions; he is the breadwinner; he is sick and he is a first offender.

6. It is trite law 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 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.

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.

10. I have considered the circumstances under which the offence was committed, the pre-sentence report and the mitigation on record. However, considering the brutal manner in which the complainant was murdered, a deterrent sentence is necessary.

11. Taking into consideration the period the accused has spent in custody pending trial and that the accused person is young and a first offender, I find imprisonment term of 15 years sufficient. In imposing this sentence, I have already considered the period of one year spent in remand custody
ROA 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 5TH DAY OF NOVEMBER, 2025

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J. N. ONYIEGO
JUDGE

