

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. E008 OF 2025

REPUBLIC.....
....PROSECUTION

VS

SIMON KITONGA NZOMO
ACCUSED

RULING ON SENTENCE

1. The accused person is 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 the 13th day of May, 2025 at Adele area of Madogo Location, Bangale Sub County within Tana River County, he murdered Cyrus Musyoka Kiema.
2. Having pleaded not guilty to the charges, the case was set for hearing. However, before tendering of witness' testimony, accused entered into a plea bargaining agreement whereby he pleaded guilty to a lesser charge of manslaughter. Upon conviction, the court ordered for a pre-sentence report.
3. According to the pre-sentence report filed in court on 3rd November,2025, accused is suitable for non-custodial sentence and recommend probation for a period of three years. The report described the accused as a middle aged man at the age of 39 years; single with no parental responsibilities; has a good reputation in prison; has never been out on bond since arrest; he is remorseful, regrets committing the offence; sought forgiveness

from the victim's family through his family; offence was committed due to poor anger management and pleads with the court to grant him non-custodial sentence.

4. In mitigation, accused pleaded for leniency on grounds that; he is a father with one daughter who relies on him for support; the offence was not premeditated; the accused and deceased were drunk when the offence occurred; the two families have reconciled with some compensation made; and sought 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 circumstances under which the offence was committed, positive pre-sentence report and the mitigation on record. Accused is remorseful. He is a young man aged 39 years

and at his productive age. Some compensation has been made. He saved court's time by pleading guilty.

10. However, life was lost in circumstances which would have been resolved amicably without resulting to violence. In the circumstances, accused is sentenced to ten years imprisonment. In imposing this sentence, I have taken into account the period 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