



**Republic v Mariko (Criminal Case E001 of 2025)  
[2025] KEHC 17245 (KLR) (25 November 2025) (Sentence)**

Neutral citation: [2025] KEHC 17245 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
CRIMINAL CASE E001 OF 2025  
JN ONYIEGO, J  
NOVEMBER 25, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**HASSAN SALAT MARIKO ..... ACCUSED**

**SENTENCE**

1. The accused herein is charged with the offence of murder contrary to section 203 as read out with section 204 of the penal code (Cap.63), Laws of Kenya. Particulars of the offence are that on the 26<sup>th</sup> day of December, 2024, at Sarira area of Sankuri ward within Garissa County, jointly with others not before court they murdered Jacob Maluki Mwanzia.
2. Having pleaded not guilty, the matter was fixed for hearing. However, before hearing could commence, the victim’s family and accused’s family engaged in negotiations to settle the matter out of court.
3. Consequently, elders from both sides met and settled on compensation of the victim’s family at Kshs.850,000/= vide a settlement agreement dated 11/02/2025.
4. With the guidance of the defence and prosecution counsel, a plea-bargaining agreement was arrived at and subsequently executed by both parties on 18<sup>th</sup> day of November, 2025.
5. In the said agreement, the accused agreed to plead guilty to committing a lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. He subsequently pleaded guilty on 19<sup>th</sup> November, 2025 and accordingly got convicted the same day. The court then ordered for a pre-sentence report.
6. According to the report, the accused is suitable for a non-custodial sentence. The report describes the accused as a youthful man at the age of 35 years; married and a father of five children some of whom are of school going age; he is remorseful and regrets the incident; his health is not good as he



is suffering gastric ulcers; he is a first offender and pleads for leniency. On the other hand, the victim's family have reconciled with the offender's family and taken compensation of eight hundred and fifty thousand shillings; have forgiven the offender and have no grudge with him. They are not opposed to non-custodial sentence.

7. In mitigation, the accused adopted the report of the probation officer seeking non-custodial sentence. He is remorseful, compensation has been made, he is a first offender and is willing to adhere to the conditions that the court may employ. He regrets the incident and the circumstances that gave rise to the offence were not intended. The prosecution does not oppose the proposal to commit the accused to non-custodial sentence.

8. 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)*”

9. 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.”

10. 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.

11. 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.

12. 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 35 years and at his productive age. Some compensation has been made. He saved court's time by pleading guilty. It is worth noting that the deceased was caught after having raped the accused person's wife. Indeed, this is a high degree of provocation for any man. To some extent the deceased was the author of his own death. In my view, this is a classic case for placement on probation. Accordingly, accused is sentenced to serve a probation period of three years.

ROA 14 DAYS



DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 25<sup>TH</sup> DAY OF NOVEMBER, 2025

.....

J. N. ONYIEGO

JUDGE

