

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT GARISSA**  
**CRIMINAL CASE NO. E005 OF 2023**

**REPUBLIC.....PROSECUTOR**

**VS**

**HAJIO MAALIM NOOR.....ACCUSED**

**RULING ON SENTENCE**

1. The accused person herein is charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code. The particulars of the offence are that on 01.02.2023 at Mandera market in Mandera East Sub - County within Mandera County jointly with another not before court they murdered Hashim Okash Mohamed.
2. Having pleaded not guilty to the charge, prosecution called a total of six (6) witnesses in its endeavor to prove its case. When the accused was placed on his defence, he tendered a sworn testimony without calling any witness. Upon close of the defence case, the court delivered its judgment thus convicting the accused of the substituted charge of a lesser charge of manslaughter. Subsequently, the court ordered for a pre-sentence report.
3. According to the pre-sentence report filed in court on 17.11.2025, accused is suitable for non-custodial sentence. The report described the accused as a youthful man at the age of 37 years; married and a father of six children some of whom are of school going age; he is remorseful and regrets the incident; he has been out on bond during his trial; his health is not good after he suffered a spinal injury following a road accident; he is a first offender and pleads for court's leniency preferring non-custodial sentence.

4. The victim's family was saddened by the incident and is divided in their opinion where some acknowledge reconciliation and compensation from the perpetrator and others totally denied any reconciliation and compensation. The religious leaders confirmed that the reconciliation and compensation was done according to Somali traditions and customs. The community is not hostile towards the offender and is not a threat to him.
5. In mitigation, the accused stated that the report confirmed that compensation was done and there was peace; he is on a wheel chair and even self-care is impossible; he is a first offender; he is remorseful; he is seeking a non-custodial sentence and that the prosecution is not opposed to the accused being placed on probation.
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.
10. I have considered the circumstances under which the offence was committed, favourable pre-sentence report and the mitigation on record. The factors that led to the accused committing the offence were partly caused by the deceased's behavior or conduct that led to the fight leading to the unfortunate end result of death.
11. Considering that there has been compensation made to the victim's family and that the two families have forgiven each other, a non-custodial

sentence is appropriate. Accordingly, accused is sentenced to serve probation period for a period of 3 years.

ROA 14 days.

Dated, signed and delivered in open court this 28<sup>th</sup> day of November 2025

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