

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NANYUKI**

**CRIMINAL CASE NO E011 OF 2023**

**REPUBLIC.....**

**PROSECUTOR**

**VERSUS**

**KELVIN MACHARIA MUMBI.....**

**ACCUSED**

**RULING ON SENTENCE**

- 1.** The Accused KELVIN MACHARIA MUMBI was charged with ***murder*** contrary to **Sections 203** and **204** of the **Penal Code**. He entered a plea bargain with the prosecution and pleaded guilty to the lesser charge of manslaughter.
- 2.** The matter is before court for sentencing.
- 3.** The court has a wide discretion on the question of sentence. However, the said discretion cannot be used by the Court of law in a fanciful and whimsical manner. Every case has to be

decided on the consideration of its circumstances including the gravity of offence, victim impact, the need to deter crime and the rehabilitation of an offender among others. The discretion does not open a *carte blanche* for a whimsical decision on the appropriate sentence

**4.** The objectives of sentencing as stated in **paragraph 4.1 of the Judiciary Sentencing Policy Guidelines** can be summarized as follows:

- a. To prevent the occurrence of crime;
- b. To punish the transgressor and the criminal;
- c. To rehabilitate the transgressor and the criminal;
- d. To compensate the victim;
- e. To deter the offender from committing any criminal acts in the future as well as other people from committing similar offences and
- f. To protect the community condemnation of the convict.

**5.** The importance of sentence was emphasized by the Supreme Court of India in the case of **ANTONY PAREIRA v**

**STATE OF MAHARASHTRA (2 AIR 2012 SC 3802) where  
it stated stated:**

***“70. Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles; twin objective of the sentencing policy is deterrence and correction. What sentence would meet the end of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.***

- 6.** I have considered the mitigation by the Accused as ably put forth by Ms. Mathenge, his counsel on record. I have carefully considered the nature of the offence, the prosecutions sentiment on sentence and the pre-sentence inquiry report filed.
- 7.** Despite a clear demonstration of owning up to his actions through an own plea of guilt in the plea bargain process, the social inquiry report depicts an offender who continues to deny the offence thus diluting any element of remorse.

- 8.** The medical report produced in evidence clearly shows that the injuries inflicted on the minor were diverse and serious, and as correctly summed up by Ms. Kimani for the state, the child underwent great torture in the final days of her short life. The fact that the torture was from the person the minor would have expected security and protection from is a deplorable occurrence.
- 9.** I have factored in the Accused's age as a mitigating factor. I have noted too that the Accused entered a plea bargain thus saving the time of the court and facilitating swift justice.
- 10.** I am of the considered opinion that in the circumstances of this case, a short custodial sentence would serve the interests of justice and afford the Accused an opportunity to reflect on his life and endeavour to reform. It will also afford him an opportunity to earn some trade to equip him with necessary skills to face life out of prison given that he has a long life ahead of him, nature and other vicissitudes of life allowing.

**11.** The Accused is to serve 5 years imprisonment. The sentence is to run from 7<sup>th</sup> November 2023, the date of his incarceration.

**Dated signed and delivered this 16<sup>th</sup> day of December 2025.**



**A.K. NDUNG’U**

**JUDGE**