

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT GARISSA
CRIMINAL CASE NO. E009 OF 2025

REPUBLIC.....PROSECUTION

VS

GEDI JELLE SHUKROW.....1ST ACCUSED

**HASAN SHUKROW SAMATAR ALIAS HARUN JELLE.....2ND
ACCUSED**

RULING ON SENTENCE

1. The accused persons herein were originally charged with the offence of murder contrary to section 203 as read with 204 of the Penal Code. The particulars of the offence were that on the 30th day of May, 2025 at Roka area of Osako Location, Roka Sub-County within Tana River County, jointly with others not before court they murdered Khalif Abdullahi Ibrahim.
2. They later pleaded guilty to a lesser charge of manslaughter after entering into a plea bargaining agreement following the victim's family's engagement in a compensation agreement with the accused's family. They were subsequently convicted on their own plea of guilty for the offence of manslaughter.
3. Consequently, the court ordered for a presentence report. According to the pre-sentence reports filed in court on 17.12.2025, accused persons are suitable for non-custodial sentence. The report described Gedi Jelle Shukrow (1st accused) as a mid-aged man of 45 years; married and a father of one child; he is remorseful and regrets the incidence; has never been out on bond during his trial; does not abuse any drugs or substances; he is a first offender and pleads for leniency.

4. For Hassan Shukrow Samatar (2nd accused), the report described him as a man aged 45 years; married and a father of thirteen children; he is remorseful and regrets the incidence; he is a first offender and pleaded for court's leniency preferring a non-custodial sentence to allow him resume his care giving and parental responsibilities.
5. On the other hand, the victim's family were compensated and had reconciled. According to the pre-sentence report, the offenders are suitable for a non-custodial sentence. The report recommended a probation period for a period of three years during which the accused will undergo counselling on anger management, advice on alternative dispute resolution, self-control and supervision.
6. In mitigation, the accused persons stated that they are remorseful; the two families engaged in a compensation and 55 heads of camel were paid as blood money. The accused persons were first offenders; victim's and accused's' family are at peace and the pre-sentence report is favourable.
7. The prosecutor confirmed that parties had reconciled and were at peace. That given the circumstances under which the offence was committed, prosecution was not opposed to the accused being placed on probation.
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 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.
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, favourable pre-sentence report and the mitigation on record. The factors that led to the accused persons committing the offence were precipitated by prior family differences which led to a fight between the two families consequences whereof, the deceased died.
13. 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 persons are sentenced to serve probation period for a period of three years.

ROA 14 days.

Dated, signed and delivered in open court this 19th day of December,
2025

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J. N. ONYIEGO
JUDGE