

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT GARISSA**  
**CRIMINAL CASE NO. E006 OF 2025**

**REPUBLIC.....**  
**.....PROSECUTOR**

**VS**

**SAMUEL MUTUNDU MUTUNE ALIAS**

**SAMUEL KIVUVA KYALO ALIA SAMMMY.....**  
**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 11.3.2025, at Korakora area, in Garissa Central Sub-County, within Garissa County, he murdered John Mutinda Kimanzi.
2. Having pleaded not guilty to the charge, prosecution called a total of nine (9) 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 charge of murder. Subsequently, the court ordered for a pre-sentence report.
3. According to the pre-sentence report filed in court on 06.03.2026, accused was declared unsuitable for non-custodial sentence. The report described the accused as a youthful man at the age of 35 years; he was married but divorced and has two children now under the care of his parents. He denied committing the offence although remorseful;

he is a first offender and pleads for court's leniency preferring non-custodial sentence; his local community gave a positive report about him contrary to the views of korakora community where the offence was committed.

4. The victim's family was saddened by the incident and are quite bitter.
5. In mitigation, the accused stated that he is a first offender; he is remorseful; he is seeking a non-custodial sentence and that he has a family which depends on him as the sole bread winner.
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, unfavourable pre-sentence report and the mitigation on record. The accused person is not remorseful. He does not appreciate what he did. The offence committed is serious. Somebody lost his life for no good reason. However, considering the circumstances preceding the commission of the offence where the accused and the victim exchanged bitter words, I find the sentence of 15 years appropriate. In arriving at this sentence, I have taken into account the period spent in remand custody during the trial pursuant to Section 333(2) of the CPC.

ROA 14 days.

Dated, signed and delivered in open court this 10<sup>th</sup> day of March 2026

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