



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Aden (Criminal Case E002 of 2022)
[2025] KEHC 5149 (KLR) (30 April 2025) (Sentence)**

Neutral citation: [2025] KEHC 5149 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E002 OF 2022**

JN ONYIEGO, J

APRIL 30, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

ABDIKADIR ADEN A.K.A ADESH ACCUSED

SENTENCE

1. The accused herein was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence are that on 24.12.2021 at Bulburis area in Garissa Township Sub County, Garissa County, jointly with others not before court they murdered Ismael Abdi Mohamed.
2. The accused person having pleaded not guilty to the charge, prosecution summoned a total of seven witnesses in support of its case.
3. When the accused was placed on his defence, he tendered his testimony without calling any witness. Upon close of the defence case, the court delivered its judgment thus convicting him of the offence charged. Subsequently, the court ordered for a pre-sentence report.
4. According to the pre-sentence report filed in court on 29.04.2025, accused is suitable for non-custodial sentence. The report described the accused as a disciplined person; the community is receptive; that the victim's family and that of the accused are close family members and have reconciled; the court was urged to consider 3 years probation period.
5. In mitigation, accused pleaded for leniency on grounds that; he is remorseful; His family and that of the victim have reconciled and compensation of kes 5000,000/= made and; he is a first offender and a young man aged 29 years.



6. The two families pleaded with the court seeking the release of the accused taking into account a settlement agreement dated 23-04-2025 entered into by the victim's family and that of the accused person mid-wifed by the Abduwak council of elders. The council of elders purported to have presided over the compensation arrangement where money exchanged hands being kes 500,000/= as damages and Kes50,000/= for funeral expenses.
7. It is trite that sentencing is at the discretion of the trial court. See Kipkoech Kogo - v - 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 v R. [1989 KLR 306]”
8. Similar position was stated by the court of appeal in Bernard Kimani Gacheru v 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.”
9. 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.
10. 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.
11. I have considered the circumstances under which the offence was committed, positive pre-sentence report and the mitigation on record. Accused is remorseful. The parties have agreed and signed a settlement agreement. There is no objection to the accused getting a non-custodial sentence. Accused is a young man aged 29 years and at his productive age. He is a close family member to that of the victim. For the sake of harmonious co-existence between the two families, a non-custodial sentence of 3 years in probation is sufficient. He shall be enrolled by the family for counselling lessons before a professional counsellor.

ROA 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 30TH DAY OF APRIL 2025

J. N. ONYIEGO

JUDGE

