



**Republic v Keinan (Criminal Case E003 of 2024)
[2025] KEHC 5335 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5335 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E003 OF 2024**

**JN ONYIEGO, J
APRIL 30, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ABDI HASSAN KEINAN ACCUSED

RULING

1. The accused person is 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 12.05.2024, at Eltutu area, Hirimani Ward, Tana North Sub – County within Tana River County, he murdered one Mohammud Mohamed Adhan.
2. Having pleaded not guilty to the charges, prosecution called a total of nine (9) witnesses in its endeavor to prove its case. However, before tendering his testimony, accused entered into a plea bargaining agreement whereby he pleaded guilty to a lesser charge of manslaughter. Upon conviction, the court ordered for a pre-sentence report.
3. According to the pre-sentence report filed in court on 30.04.2025, accused is suitable for non-custodial sentence. The report described the accused as a disciplined youthful person aged 28 years; the community is receptive; that the victim’s family and that of the accused are close family members and have reconciled. The report states that the accused attacked the victim after discovering that he was engaged in a love affair with his wife despite several warnings to stop. The court was urged to consider 3 years probation period.
4. In mitigation, accused pleaded for leniency on grounds that; he is remorseful; his family and that of the victim have reconciled and some compensation made; he is a first offender and a young man aged 28 years and; he reacted due to the persistent engagement of the victim in an extra marital affair with his wife.



5. 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)”

6. 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.”

7. 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.

8. 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.

9. I have considered the circumstances under which the offence was committed, positive pre-sentence report and the mitigation on record. Accused is remorseful. He is a young man aged 28 years and at his productive age. He is a close family member to that of the victim. Some compensation has been made. He saved court’s time by pleading guilty.

10. However, life was lost in circumstances which would have been resolved amicably without resulting to violence. In the circumstances, accused is sentenced to two years imprisonment. In imposing this sentence, I have taken into account the period spent in remand custody.

ROA 14 days.

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

J. N. ONYIEGO

JUDGE

