



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Osman (Criminal Case E010 of 2022)
[2025] KEHC 5325 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5325 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E010 OF 2022**

JN ONYIEGO, J

APRIL 29, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

SADIA AHMED OSMAN ACCUSED

RULING

1. Sadia Ahmed Osman the accused herein was charged with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. Particulars of the offence are that on 17.04.2022 in Bula Kajibo estate, Madogo Division, Bangale Sub County within Tana River County she unlawfully murdered one John Sammy Kyalo.
2. When arraigned before this Court, she pleaded not guilty to the charge. A full trial followed with the prosecution presenting a total of six witnesses to prove its case. When the accused was placed on her defence, she 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 offence charged. Subsequently, the court ordered for a pre-sentence report.
3. According to the pre-sentence report filed in court on 28.04.2025, accused is suitable for non-custodial sentence. In mitigation, accused pleaded for leniency on grounds that; she is a first offender; has faithfully attended court; she is a mother of nine children all of whom are minors; she is not married hence the sole breadwinner; she has reconciled with the deceased's family and; she is remorseful.
4. 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)”

5. 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.”

6. 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.
7. 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.
8. I have considered the circumstances under which the offence was committed, positive pre-sentence report and the mitigation on record. Accused is remorseful. According to the victim’s mother, her family has reconciled with the accused’s family. She has already received kes 50,000/= and a balance of Kes 50, 000/= will be cleared in a month’s time.
9. Indeed, the death herein was not intended. It was an act precipitated by the fight between children culminating to one parent the accused herein standing in defence of her child who had been beaten by the deceased. These situations are common in villages. As a parent, she thought she was disciplining the deceased but the unfortunate occurred.
10. Considering that she is a single mother with nine young children depending on her, and further considering that the victim’s family has reconciled and in fact received some compensation, I am persuaded to place her on probation for a period of three years.

ROA 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 29TH DAY OF APRIL 2025

J. N. ONYIEGO

JUDGE

