



**Republic v Wekesa & another (Criminal Case E002 of 2021)
[2024] KEHC 8068 (KLR) (28 June 2024) (Sentence)**

Neutral citation: [2024] KEHC 8068 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E002 OF 2021**

**JN ONYIEGO, J
JUNE 28, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

DANIEL WANJALA WEKESA 1ST ACCUSED

RONALD MAYOKA EDWARD MALEYA 2ND ACCUSED

SENTENCE

1. The Accused persons herein were charged jointly with the offence of murder contrary to section 203 as read out with section 204 of the [Penal Code](#). Particulars are that on 15th day of March 2021 at around 2000hrs at qahira farm situated at Raya area in Garissa Sub-county, within Garissa county, jointly murdered peter Wafula Kundu.
2. Having returned a plea of not guilty, the matter proceeded to full trial consequences whereof the 2nd Accused was acquitted. Accused one was however convicted hence this sentence against him. Having found him guilty, the court ordered for a pre-sentence report.
3. According to the report, the accused maintained his innocence towards commission of the offence herein. That the community described him as a cool guy and that they had no issue in joining society. It also indicated that the victim's family and that of the offender had held reconciliatory talks and that they were in good terms. The report recommended for a lenient sentence.
4. On his mitigation, he pleaded for leniency based on the pre-sentence report. I have considered the gravity of the offence visa vis the pre-sentence report and the mitigation on record.



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 carefully considered the circumstances under which the offence was committed and the mitigation on record. I have also considered the sentiments contained in the pre-sentence report which is not favourable. Accused person maintains his innocence. He is not remorseful. In his mitigation, he merely prayed for leniency based on the pre-sentence report.

10. The offence was committed out of sheer malice which was not warranted. A deterrent sentence is necessary. Accordingly, accused one is sentenced to serve 18 years imprisonment less 3 years spent in remand custody.

ROA 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 28TH DAY OF JUNE 2024.

J. N. ONYIEGO

JUDGE

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