



**Republic v Kanana (Criminal Case E013 of 2022)
[2024] KEHC 15168 (KLR) (29 November 2024) (Sentence)**

Neutral citation: [2024] KEHC 15168 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL CASE E013 OF 2022
JN ONYIEGO, J
NOVEMBER 29, 2024**

BETWEEN

REPUBLIC PROSECUTOR

AND

BRIGIT KANANA ACCUSED

SENTENCE

1. The accused person herein Brigit Kanana 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 08.07.2022 at about 2130hrs at Bulla Central area in Jamhuriya Location within Mandera County, she murdered Felix Kinyua.
2. The accused person pleaded not guilty to the charge. Seven (7) witnesses were called by the prosecution in support of its case. Consequently, she was found guilty and convicted. The court ordered for a pre-sentence report which recommended for anon-custodial sentence. The report indicated that the offender was remorseful for committing the offence on the heat of the moment as she quarreled with the deceased over non-payment of beer bill. That she was a single mother and therefore the sole breadwinner to her children being a single mother.
3. In mitigation, she pleaded for leniency being a mother of two children agedss 6 and 10 years.
4. 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)”

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 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 favourable. Accused person admitted the offence. She appeared remorseful. She is a first offender.
9. However, the offence committed is serious. Somebody lost life due to non-payment of a beer bill of 350 /=. The accused over reacted in the circumstances. A deterrent sentence is necessary. Accordingly, accused is sentenced to 15 years imprisonment.
10. In meting out this sentence, I am mindful of the requirement of Section 333(2) of the *CPC* by taking into account the period spent in remand custody. The sentence pronounced has taken into account the few days she was in custody.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 29TH DAY OF NOVEMBER 2024

J. N. ONYIEGO

JUDGE

