



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT GARISSA**

**CRIMINAL CASE NO. 11 OF 2014**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**ABDIHARAM BARISSA.....ACCUSED**

**SENTENCING ORDER**

1. The accused has been convicted of offence of grievous harm contrary to **section 234** of the **Penal Code Cap 63 Laws of Kenya**.
2. The accused was afforded opportunity to mitigate after State stated that there were no previous records.
3. The accused mitigated via his advocate to the effect that, he is remorseful and regrets the death of the deceased. He says the incident occurred in the heat of the moment when he fought the deceased.
4. The 2016 Judiciary of Kenya Sentencing Policy Guidelines lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

*“Sentences are imposed to meet the following objectives:*

*I. Retribution: To punish the offender for his/her criminal conduct in a just manner.*

*II. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.*

*III. Rehabilitation: To enable the offender reform from his criminal disposition and become a law abiding person.*

*IV. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.*

*V. Community protection: To protect the community by incapacitating the offender.*

*VI. Denunciation: To communicate the community’s condemnation of the criminal conduct.”*

5. In the case of **Nicholas Mukila Ndetei v Republic [2019] eKLR** the held that, **“the sentencing policy states at paragraph 4.2 that when carrying out sentencing all these objectives are geared to in totality, though in some instances some of the sentences may be in conflict.”**

6. The court has considered the evidence on record as to how accused killed the deceased, period in custody, mitigations and the fact that he is a first offender. The court notes that the accused chased deceased and without any provocation or justification inflicted the fatal injuries. It was an act of brutality which calls for harsh sentence in the circumstances.

7. However, the court finds that, in the circumstances of the incident, there are no circumstances to warrant court to mete out life sentence but severe custodial sentence suffices.

8. Thus accused is sentenced to 25 years' imprisonment with effect from 27/6/2014.

9. Right of appeal explained.

**DELIVERED AND SIGNED AT GARISSA THIS 24<sup>TH</sup> DAY OF MARCH, 2021.**

.....

**C. KARIUKI**

**JUDGE**



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