



**Republic v Hamisi & another (Criminal Case E008 of 2023)
[2024] KEHC 9527 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9527 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
CRIMINAL CASE E008 OF 2023
WM MUSYOKA, J
JULY 26, 2024**

BETWEEN

REPUBLIC PROSECUTION

AND

FRANCIS HAMISI 1ST ACCUSED

EMMANUEL ANDERA SIKUKU 2ND ACCUSED

RULING

1. I convicted the accused persons herein, Francis Hamisi and Emmanuel Andera Sikuku, on 31st May 2024, of the murder of Patrick Otieno Makali. The background was that the deceased had attacked the 1st accused on 1st April 2023, and fled, whereupon the accused vented their anger, by setting his house of fire, and cutting down his sugarcane and trees. The following day, 2nd April 2023, the accused persons attacked the deceased at the home of their parents, and assaulted him severally. He died after he was hit on the head with a big stone by the 2nd accused.
2. In mitigation, it was said, by his Advocate, Mr. Were, that the accused had no previous criminal records, and that they were pleading for leniency. He stated that the deceased was a bad element in the family and the community, who had even allegedly committed a murder in Narok. The deceased was said to have been the aggressor. The accused persons were described as family persons, and that, for one of them, his wife died while he was in custody.
3. The Republic, through Mr. Onanda, submitted that a life was lost, regardless of the character of the deceased person, and asserted that the accused persons had no right to take the law into their own hands.
4. I called for pre-sentence reports, and only 1 was filed, dated 1st July 2024, in respect of the 1st accused. It indicates that the 1st accused was still denying commission of the offence, insisting that the deceased was killed by a mob.



5. I have considered the mitigation, the pre-sentence report and the recorded evidence. Contrary to the assertion that the deceased was the aggressor, the evidence, recorded from the witnesses, attested otherwise. There was an altercation between the deceased and the 1st accused the previous day, but on the day the deceased died, it was the accused persons who attacked him, at the home of their parents. Secondly, the manner of the killing was most brutal, a hit on the head with a building block, so severe as to crush the head. Thirdly, the accused persons express no remorse, for they still deny that they caused the death, insisting that the deceased died after a beating by a mob.
6. I am cognisant, from the recorded evidence, and the pre-sentence report, that the deceased was a troublesome person, but that, of itself, was no justification for his killing. If the accused persons had been wronged by him, in any way, the appropriate thing would have been to report him to the authorities, so that the law could take its normal course. They failed to do that, and, instead, chose to take the law into their own hands.
7. Taking everything into account, I hereby sentence the accused persons, Francis Hamisi and Emmanuel Andera Sikuku, to serve imprisonment for a period of 30 years, for the murder of Patrick Otieno Makali. There is a right of appeal, to the Court of Appeal, and the appeal ought to be filed within 14 days of the date of this order.

DELIVERED, DATED AND SIGNED, IN OPEN COURT, AT BUSIA ON THIS 26TH DAY OF JULY 2024

W MUSYOKA

JUDGE

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Were, Advocate for the accused person.

Ms. Chepkonga and Mr. Onanda, instructed by the Director of Public Prosecutions, for the Republic.

