



**Republic v Maina (Criminal Case E016 of 2021)  
[2023] KEHC 1499 (KLR) (Crim) (22 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 1499 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL CASE E016 OF 2021  
JM BWONWONG'A, J  
FEBRUARY 22, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**HUSSEIN CHEMWOR MAINA ..... ACCUSED**

**JUDGMENT**

1. The issue before me is in respect of the appropriate sentence to be imposed upon the accused, following his conviction on a plea of guilty on a charge of manslaughter on December 14, 2022.
2. The deceased in this case was the elder brother of the accused. The two quarreled over the wife of the accused, who was housed by the deceased and his wife. In the course of quarrelling, the deceased was stabbed with a knife by the accused. It is this stab that caused the death of the deceased.
3. The prosecutor informed the court that the accused is a first offender.
4. Counsel for the accused (Mr Omenke) mitigated on behalf of the accused. Counsel informed the court that the wife of the deceased had forgiven the accused. counsel continued to inform the court as follows. The accused is remorseful. He was shocked at the death of the deceased. According to his father the family have forgiven the accused.  
  
The accused has prayed for a non-custodial sentence.
5. The social inquiry report, which was prepared by the probation officer recommended a non-custodial sentence in view of the fact that the accused has been forgiven by the family and that he is remorseful.
6. However, according to the community at the home of the accused, they are waiting for the accused to return home to perform cleansing rites; before he is re-integrated back to the society. The community do not want the accused to be released, because of the offence that he committed. The uncle of the



deceased met with the village elders and they resolved that the accused is not acceptable by the extended family.

7. The accused has been in pre-trial remand custody since the second half of February 2021, which translates to a period of about two years.
8. I have taken into account the pre-trial remand period of about two years in sentencing the accused; as mandatorily required by section 333 (2) of the *Criminal Procedure Code* (cap 75) Laws of Kenya.
9. Additionally, I have also taken into account that a life was lost and the accused has caused mental anguish to the widow of the deceased, his parents and members of his community.
10. I have considered both the mitigating, aggravating factors and the circumstances of the case.
11. The upshot of the foregoing is that I hereby sentence the accused to four years imprisonment.

**JUDGEMENT SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 22<sup>ND</sup> DAY OF FEBRUARY 2023.**

**J M BWONWONG'A**

**JUDGE**

In the presence of-

Mr Kinyua: Court Assistant

Ms Maina for the Republic

Mr Omenke for the accused.

The accused in person.

