



REPUBLIC OF KENYA



**Republic v Maina & another (Criminal Case E005 of 2022)  
[2025] KEHC 1615 (KLR) (19 February 2025) (Sentence)**

Neutral citation: [2025] KEHC 1615 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT EMBU  
CRIMINAL CASE E005 OF 2022  
RM MWONGO, J  
FEBRUARY 19, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**JOHN GATHIAKA MAINA ..... 1<sup>ST</sup> ACCUSED**

**JOSEPH KIMANI MAINA ..... 2<sup>ND</sup> ACCUSED**

**SENTENCE**

1. The accused persons were charged with murder contrary to Section 203 as read together with Section 204 of the *Penal Code*. Particulars of the offence are that on 24<sup>th</sup> April 2022 at Wandigi village Wachoro location in Mbeere South sub-county within Embu County, the accused persons murdered Joseph Ngwenze Mweu. The accused persons pleaded not guilty and the matter proceeded to full hearing.
2. The evidence established that the accused persons who are brothers, found the deceased in their mother's house at night and they drove him out. The deceased had made a habit of visiting their mother's house since their father died. The accused thus beat him up and he was found dead inside his house. After a full hearing, the accused persons were convicted with the offence of manslaughter.
3. In mitigation, the accused persons stated that they are first offenders who were remorseful. They prayed for non-custodial sentences since their presentence reports are favorable.
4. The prosecution stated that the offence of manslaughter attracts a sentence of life imprisonment. It urged that the court do sentence each of the offenders to 10 years imprisonment.
5. According to the probation officer's reports, both dated 22<sup>nd</sup> January 2025, the accused persons related well with the deceased until the night of the incident. The report indicated that they are remorseful. That they had too much alcohol to drink that day and their actions arose from overindulgence; that



they found it disrespectful that their mother occasionally went home with the deceased after their drinking sprees, considering that their father had died barely 2 years prior.

6. The family of the accused was of the view that given the good relationship between the accused and the deceased, the incident leading to the deceased's death was merely an accident. They expressed their willingness to engage the victim's family for traditional cleansing in a bid to recover the good relationship they had. On the other hand, the deceased's family is bitter about the loss of their kin. They stated that the accused's mother has shown them indifference and they demand compensation for their loss through Kamba Traditions, whether or not the accused person is jailed. The reports also detailed that the victim's family has approached the offenders' family for traditional compensation at the rate of 14 head of cattle each valued at Kshs.10,000/=. If this compensation is paid, they have no problem living at peace with the offenders and their families.

7. The punishment for a person convicted of the offence of manslaughter is prescribed under Section 205 of the *Penal Code* which provides:

“ Any person who commits the felony of manslaughter is liable to imprisonment for life.”

8. The life imprisonment sentence has severally been held as unconstitutional. For instance, in the case of *Ayako v Republic* [2023] KECA 1563 (KLR), the Court of Appeal held thus:

“This qualitative survey of how different jurisdictions have treated life imprisonment in the recent past provides objective indicia of the emerging consensus that life imprisonment is seen as being antithetical to the constitutional value of human dignity and as being inhuman and degrading because of its indefiniteness and the definitional impossibility that the inmate would ever be released. This emerging consensus of the civilized world community, while not controlling our outcome, provides respected and significant confirmation for our own conclusion that life imprisonment is cruel and degrading treatment owing to its indefiniteness.”

9. The Case of Julius Kitsao Manyeso is more direct, wherein the Court of Appeal stated that life imprisonment is unconstitutional holding:

“21. .... we are of the view that the reasoning in *Francis Karioko Muruatetu & another v Republic* [2017] eKLR equally applies to the imposition of a mandatory indeterminate life sentence, namely that such a sentence denies a convict facing life imprisonment the opportunity to be heard in mitigation.... This is an unjustifiable discrimination, unfair and repugnant to the principle of equality before the law under article 27 of the Constitution. In addition, an indeterminate life sentence is in our view also inhumane treatment and violates the right to dignity under article 28.....”

26. ... we are of the view that having found the sentence of life imprisonment to be unconstitutional, we have the discretion to interfere with the said sentence”.  
(Emphasis added)

10. The court has considered the circumstances of the case and how the deceased met his death. The death was not premeditated but it could have been avoided. The Judiciary Sentencing Policy Guidelines 2023 provides the objectives of sentencing which are:

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



2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
  3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
  4. 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.
  5. Community Protection: to protect the community by incapacitating the offender.
  6. Denunciation: To communicate the community's condemnation of the criminal conduct.
11. Ultimately, the rights of the victim's family should be balanced against the rights of the accused person when considering a more lenient sentence. This was echoed in the case of *Republic v Mwangi* [2024] KEHC 367 (KLR) (Sentence) it was held that:

“The court has to balance between the need to have the accused atone for her actions and the need to exercise leniency, given the circumstances of the case. In this regard I think that the sentence proposed by the State is appropriate and within the range of sentences meted out in similar cases.”

12. In exercising its discretion in sentencing, which discretion must be exercised judiciously, this Court must ensure the sentence is based on a sound and sensible judgment with a view to doing justice to the parties.
13. The probation officer's reports inform the Court that the family of the victim may not have preferred a custodial or non-custodial sentence for the offenders. However, they are keener on getting compensation according to their culture for the loss of their kin. In that case, a non-custodial sentence would be a gamble and may result in more harm upon the accused persons.

### **Disposition**

14. In the premises, the Court considers that a custodial sentence is appropriate in the circumstances of this case.
15. Accordingly, both accused persons are each sentenced to six (6) years imprisonment, which term shall include any time already spent by each accused person in remand custody.
16. Orders accordingly.

**DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 19<sup>TH</sup> DAY OF FEBRUARY, 2025**

**R. MWONGO**

**JUDGE**

Delivered in the presence of:

1. Mageto holding brief for Muchangi for both accused
2. Accused 1 Present in Court
3. Accused 2 Present in Court



4. Karuri for the State

5. Francis Munyao - Court Assistant

