



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Masira (Criminal Case E009 of 2023)
[2025] KEHC 2941 (KLR) (6 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 2941 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
CRIMINAL CASE E009 OF 2023
CM KARIUKI, J
MARCH 6, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

MAISON OBIKI MASIRA ACCUSED

SENTENCE

1. The accused is charged with an offence of murder under Section 203 as read with Section 204 of the *Penal Code* Cap 63 Laws of Kenya.
2. He pleaded not guilty, and the matter went for pre-trial directions and eventually to a plea bargain process commenced.
3. The charge was substituted to that of manslaughter, whereof he pleaded guilty, and plea of guilty was entered. The facts were read which were to the effect that:
4. On 28/10/2023 at around 1900hrs, the accused person arrived home from Kilgoris town. He had taken alcohol at a den along his way, and he was visibly drunk. He sat outside his house where he could be heard talking at the top of his voice.
5. According to the accused person, he sat outside and saw a person flashing light at him. It was the deceased. The deceased neared him and the accused saw that he was carrying a Maasai sword, and he immediately attacked him. The deceased too was apparently drunk. A tussle ensued between them. The accused overpowered the deceased, and they fell to the ground. The Maasai sword fell from the deceased's hands. He retrieved it and cut the deceased on his neck.
6. From a distance, the accused's neighbors could hear the accused speaking loudly asking the deceased what he was doing at his (the accused's) house at that time. Shortly a woman shouted at him asking him to go and save the situation as the two were fighting. On arrival, he saw the accused holding a Maasai



- sword on one hand and a torch on the other. The deceased was lying on the ground. The accused asked him what he was doing in his (the accused's compound) and he retreated and called more people.
7. The accused's neighbors arrived with a group of other people and arrested the accused person. A report was made to the police who thereafter came and collected the deceased's body and him to St. Josephs Mission Hospital. A postmortem examination was conducted on his remains which led to a conclusion that he succumbed to hemorrhage secondary to homicide. The accused was re-arrested by the police and charged before the court.
 8. He admitted the facts and the court convicted the accused on his plea of guilty for the offence of manslaughter.
 9. The prosecution informed court that accused had no previous records thus can be treated as a first offender.
 10. In mitigation through his advocate, he was said to be a young man aged 30 years old married with 4 minors and he was the sole breadwinner to the family. He was said to be remorseful of the incident and killing was not pre-meditated.
 11. He sought to be given a second chance in life as his family is in disarray. That the family of both sides, community and local administration are said to be positive and desire accused of being given a second chance as can be discerned from the PCR report, they seek accused to be granted a non-custodial sentence to re-start his life. He promises to never re-offend if given a second chance.
 12. However, the prosecution insisted on accused being awarded a custodial sentence in view of the circumstances of the case. Further the accused has not suggested any intention to reconcile with the victim's family nor to seek forgiveness from the same family and local community.
 13. In Kenya, the key principles of sentencing include proportionality (sentences matching the gravity of the offense), equality (similar offenses receiving similar sentences), accountability (clear reasoning behind sentencing decisions), community protection, rehabilitation, and denunciation (conveying societal disapproval of the crime), all aiming to ensure fairness and justice while considering the offender's circumstances and the impact of the crime on the victim and community.
 14. The admitted facts of the case in summary are that the accused while drunk at about 19hrs (7p.m) sat outside his house where he could be heard shouting at the top of his voice while in that state, he saw a person in his compound flashing light at him. It turned out that it was the victim here in who did so, and he approached where accused was, the accused noticed that the victim was armed with a Maasai sword and thus he attacked him.
 15. The victim, who was apparently drunk engaged in a tussle and accused overpowered him and they fell on the ground. The Maasai sword fell from deceased's hands. Accused retrieved it and cut the victim on his neck. A woman could be heard shouting asking accused to go and save the situation as the two were fighting.
 16. The accused was asking the victim what he was doing on his compound. Then they retreated and called more people. The public arrested him, and the report was made, and the police came and collected the deceased's body. The particulars in postmortem report disclose multiple cut wounds including deep and extensive wound on the anterior part of the neck and cause of death was stated to be hemorrhage secondary to homicide.
 17. The facts disclose, a scenario of a fight triggered by a drunkard victim who strayed into private compound where the owner a drunkard also was sat outside his house but saw armed stranger approach



flashing a torch thus, an attack from accused ensued on him (victim) a fight erupting leading to injuries which led to victim's death.

18. The question is, Was the attack justified? The accused did not say whether he asked the victim to identify himself but just attacked him without knowing the victim's mission. He may have employed a pre-emptive attack to forestall harm on himself (accused) though not advanced as a theory of the attack.
19. It is not in doubt a fight ensued but upon overpowering the victim, the accused did not stop at that stage but used the sword (Maasai), he flipped from the victim and butchered him (the victim).
20. Maybe panic and fear made him decimate the potential attacker but same not advanced as a defense.
21. However, the court notes that this was a rural setting setting where darkness reigned and any stranger in the compound at night with a torch without identifying himself may be perceived as a potential threat.
22. However, maybe the accused could have stopped at the stage where he disarmed the victim and was on the ground unless the victim made move to pursue the accused. But going ahead to cut the neck aggravated the situation thus calling for sanction.
23. The PCR report discloses that accused was elder brother to the deceased and family members were not opposed to non-custodial sentence. The local community and local administration were of the view that such incidents are prevalent and there was need to suppress them thus need for the accused to be rehabilitated though proposed lenient sentence.
24. I find it appropriate to sentence the accused a mixed sentence of custodial and noncustodial combined and which takes to account his period in custody for him to reform and tame his violent behavior.
25. Thus, the court makes the orders.
 - i. The accused is sentenced to 3 years imprisonment and after that 3 years' more for probation service to enable him reform and tame his violent behavior.
 - ii. Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY IN KILGORIS HIGH COURT ON 6TH DAY OF MARCH 2025.

CHARLES KARIUKI

JUDGE

In The Presence Of:

Court Assistant: Mr.nyangaresi

Advocate For The Accused:

