



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Kimeu (Criminal Case E019 of 2021)
[2025] KEHC 10694 (KLR) (16 July 2025) (Sentence)**

Neutral citation: [2025] KEHC 10694 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE E019 OF 2021**

TM MATHEKA, J

JULY 16, 2025

BETWEEN

REPUBLIC PROSECUTOR

AND

JAMES MAITHA KIMEU ACCUSED

SENTENCE

1. The accused person James Maitha Kimeu entered into a plea bargain agreement with the prosecution where he pleaded guilty to the lesser charge of manslaughter contrary to section 202 as read with 205 of the *Penal Code*. The particulars are that on 28/7/2021 at 2000hrs at Muselele Area, Kaumoni Location, Makueni Subcounty within Makueni County he caused the unlawful death of Mwanthi Kyango Malile.
2. The facts as read to him by the prosecution were:

On 27/7/2021 at Maselele Kaumoni Location, Makueni Subcounty the accused was at home. He started creating disturbance. His mother and the sister ran away leaving him at home with his grandmother one Muteva, Malaka, Maitha. She locked herself indoors. She remained there until the following day 28/7/2021 – she left in the morning to home of deceased Mwanthi Kyango Malili who is her son in law. She told the son in law about the vurugu the accused had started at home. Mwanthi came home to calm the accused down. When he came the accused attacked him, he hit t him, he fell down and died.

No one witnessed this but later people came home and saw what had happened. The incident was reported to Makueni Police Station. The accused was arrested, youand charged with murder – but upon plea bargain it was reduced to manslaughter.

Further DCI investigation showed that there was a problem as the accused appeared to have a mental health issue referred to by the prosecutor as hali yake ya udhibiti wa akili.



When he was brought to court he was still in poor to mental health. He was treated, and was now better.

A postmortem was conducted on the body of the deceased on 3/8/2021 at Makindu Referral Hospital. The cause of death was found to head injuries caused by blunt force –the report signed on 3rd August 2021 was produced as PEx. 1

3. The accused pleaded guilty to the facts. He was convicted on his own plea of guilty.
4. His counsel Mr. Hassan submitted in mitigation that; The accused is was a first offender and prayed for lenience from court. That the accused suffered from a mental defect, that he was a father of 2 children – grade 5 and grade 9. He submitted that there was a positive report from home and that he believed that an order under section 20 A of the [Mental Healib Act](#) which provides for review would be appropriate and urged the court to send the accused for mental review to ensure a sentence that would that would support his reintegration back to society . He also urged the court to consider as time served the time that the accused had spent in custody since 2021. In the alternative he sought a non-custodial sentence as the accused could not be detained at the pleasure of the president because that provision of the law was declared The PACS report contains the Victim Impact Assessment report where the accused’s family’s vie is that the violent act “caused the family serious psychological imbalances” which some had not been able to cope with. That it caused the accused’s maternal so much stress that she got ill. The report also points out the absence of a psychosocial support in the Criminal Justice system for victims of such offences such as this one and recommends professional counseling to enable them to cope with the situation to enable them undergoes a healing process.
5. It is apparent from the Victim Impact Assessment report, that Mwathi Kyango Malile was main source of joy, happiness, love and hope to his parents, children and Siblings. They feel that they lost the very important person in the family. The loss of the family has immensely changed their lives in terms of income and happiness. Emotional instability because of the death is still experienced by the family members thus there is need for a psychological counseling to be offered to the family. This family is still bitter and holds grudges towards the accused person’s act towards their kin. They are not willing to forgive him. And plead with the court to take its course.
6. The PACS officer concludes thus:

That from the above social inquiry, the following findings have been established. The accused’s family hails from Maiyu extended family of the Muunzauni clan. The family is settled at Muselele village, Kaumoni S/location, Kilala Location in Makueni S/County within Makueni County. He was born in the year 1989 and attended kaumoni HGM primary school where he did his KCPE. He then proceeded for his post-primary education at Kyumu Secondary school where he also completed well after sitting for his KCSE. He did not manage to proceed with tertiary education therefore he started working. as domestic servant and casual laborer after attaining 18 years, to his day of arrest. The accused is separated and father of two children. The accused has had episodes of mental condition from his early youth hood. He has been to Good Hope Rehabilitation Center, Makueni Referral and Machakos Hospital for treatment. Due to heavy abuse of bhang and other drugs related substances it was noted that it made him become aggressive and violent towards his family and some community members. Most of the time in between 2013 to 2018, the accused was staying at marketplace, mostly referred as mad man. The family is positive about him being considered for lenient sentence, however, expressed their misfortune of catering his medical treatment. The community is negative toward him considering his past unfavorable behaviors. The victim’s family is an immediate neighbor to the accused family



and in laws. The victim family is still traumatized and bitter toward the accused person. They expressed a negative attitude to him being considered for lenient sentence stating that their security is not granted....the accused person holds criminally inclined mental thought processes. He was not mentally stable during the interview. The community holds unfavorable reports towards him, and the victim's family is still bitter towards the act and the accused person, which will this non-custodial rehabilitation and supervision difficult. I therefore leave this matter to this Honorable Court to deal with it in a manner it deems fit.

7. From the foregoing it safe to draw the conclusion that the PACS officer finds it difficult to recommend a non-custodial sentence due to the fact that the accused person has relapsed, the family is unable to cater for his treatment and the family of the deceased are still afraid of him.
8. The state concedes that at the time of the offence the accused was suffering from a mental illness. At the time of the plea bargain he had undergone treatment and was ok. By the time of the interview for the Pre-sentence report he was relapsing.
9. The issue then is what sentence should this court impose?
10. I am alive to the provisions of the Penal Code on the issue of mental incapacity or insanity. Section 11 provides for the Presumption of sanity

Every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved.

11. Section 12 provides for the exception.

A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission; but a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission.

12. The mental assessment reports dated 2nd August 2021 showed that he had been on treatment and follow up for 8 years at the time of the incident and had defaulted on his treatment, and 6th September 2021 he was still incompetent but continuing on treatment. During this reviews he accepted that he had killed someone, on 22nd November 2021, he was found not fit to plead, improving on treatment , still accepting the killing, on 14 February 2022 he was found competent to take plea, to continue with the trial and continue with medication.
13. It is evident that the accused pleaded guilty to manslaughter because at the time he committed the offence he was aware of the violent act he committed but he did not intend to kill the deceased. From the reports by the psychiatrist the accused appears to be aware that he killed someone and that is the reason for his acceptance of the killing when he went reviews by the psychiatrist. At the time of committing the offence he was violent for defaulting on his treatment. That violence led to the death herein but it was not intended.
14. This court takes guidance from the SPGS 2023 that in meting out a sentence to a person such as the accused herein it is necessary to obtain the guidance of a psychiatrist. There would be need for the review of the mental health status of the accused person. I am guided also by Section 20A of the Mental Health Act Provides for the Review of mental health status: It states



- (1) The mental health status of a person with mental illness shall be reviewed periodically by a mental health practitioner and such review shall include a review of —
 - (a) the nature of the illness;
 - (b) the need for care and treatment;
 - (c) the type of care and treatment provided;
 - (d) the need for referral, transfer or discharge; and
 - (e) any other matters related to the mental health status of the person with mental illness.
- 2) The review of the mental health status of a person with mental illness may be initiated by—
 - (a) the person with mental illness;
 - (b) the mental health care practitioner in charge of managing the person with mental illness;
 - (c) a supporter of the person with mental illness;
 - (d) a representative of the person with mental illness;
 - (e) the person in charge of the facility;
 - (f) any other person upon proof of the nature of their interest; or
 - (g) the Board

15. Hence For purposes of final disposition I make the following
Order

1. That the offender be escorted to Makueni Teaching & Referral Hospital for the requisite review under s. 20A of the *Mental Health Act* and a report to assist the court to arrive at the final disposition in the matter.
2. This order be served upon the In Charge Makueni Main Prison and the Psychiatrist Makueni Teaching & Referral Hospital for compliance.

The report be availed to court within 14 days hereof.

- a. For a diagnosis
- b. to determine whether he poses danger to the public or to himself
- c. to determine whether he requires further treatment, and if so, the recommendation on what that would entail.

16. Mention before the DR on 7th August 2025.

DATED, SIGNED AND DELIVERED THIS 16TH JULY 2025

MUMBUA T MATHEKA

JUDGE

Chrispol CA

Accused Present



Mr. Hassan for the accused

Mr. Kazungu for State

