



**Republic v Farah alias Issa (Criminal Case E085 of 2022)  
[2025] KEHC 9413 (KLR) (Crim) (1 July 2025) (Sentence)**

Neutral citation: [2025] KEHC 9413 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL**

**CRIMINAL CASE E085 OF 2022**

**K KIMONDO, J**

**JULY 1, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**MAHADH FARAH ALIAS ISSA ..... ACCUSED**

**SENTENCE**

1. The accused pleaded guilty to the lesser but cognate offence of manslaughter under a plea agreement recorded on 10<sup>th</sup> March 2025. I should point out that by then the prosecution had called ten witnesses and long closed its case for murder; and, that on 4<sup>th</sup> December 2023, the court had ruled that the accused had a case to answer.
2. It bears repeating that up to that stage, the accused enjoyed the presumption of innocence. The conviction for manslaughter is based on the admitted set of facts now set out on the face of the plea agreement.
3. It is also important to state that the family of the victims had formally opposed the plea-bargaining process through an earlier chamber summons dated 5<sup>th</sup> June 2024 originally lodged at the Judicial Review Division being application *No. E124 of 2024*. Following objections to the procedure and forum, the matter was transferred to the Criminal Division on 12<sup>th</sup> June 2024 and re-numbered as *Miscellaneous Criminal Application No. E190 of 2024*.
4. By a considered ruling delivered on 13<sup>th</sup> December 2024, the chamber summons was dismissed opening the path to the recording of the plea agreement.
5. Returning now to the matter at hand, Abdifatha Hassan Baare alias Mrefu (hereafter the deceased), was a water vendor in the Eastleigh suburb, Nairobi. The accused was also carrying out a similar business.



6. On 11<sup>th</sup> September 2022 at about 18:00 hours, the deceased left his residence at Burhan Estate accompanied by his son. They were riding a motorbike. Their mission was to resolve an altercation between the driver of their water bowser, Wallace Njuguna, and the accused on who between them had the right to supply water at the Maida Apartments, Eastleigh.
7. At the scene, the accused accosted the deceased. He pounced on him and stabbed him with a Somali sword on the left side of the chest and fled from the scene with the weapon. The deceased succumbed to the fatal wound at Al-min Hospital. The accused went into hiding but was eventually arrested on 4<sup>th</sup> December 2022.
8. According to the autopsy conducted by Dr. Simon Omuok, the cause of death was “excessive haemorrhage from chest injury due to a single stab wound”. I find that the conclusion is consistent with the facts read out at the trial and now admitted by the accused.
9. The deceased and the accused were not strangers. In fact, the deceased had originally housed the accused upon his arrival from Somalia but they later fell out. There was also a history of two other disagreements. The first was resolved by Somali elders. The second one was on 11<sup>th</sup> August 2022, a month before the homicide, when the accused threatened to kill the deceased as captured in a WhatsApp audio.
10. Learned prosecution counsel, Ms. Kigira, produced the records of the accused indicating he is a first offender. She urged the court to consider the cruelty meted out on the deceased who was unarmed and the impact of the offence on the victim’s family. She prayed for a suitable custodial sentence.
11. The victim’s family was represented by Mr. Akello. He relied, primarily, on the victim impact statement contained in an affidavit sworn on 28<sup>th</sup> April 2025 by Hassan Abdifatah Hassan, a son of the deceased. The key take-aways are as follows: Firstly, that the killing was cruel and pre-meditated; secondly, that the accused has shown no remorse or made any apology to the family. He added that neither the family nor the community have forgiven the accused.
12. Thirdly, he avers that the deceased was the breadwinner with the result that the family has been rendered destitute. At paragraph 13, he deposes as follows-

The gruesome murder has led to financial and economic challenges as my younger siblings are finding hard (sic) to pursue education ...our lives are not secure as a result of the murder and I had to drop out in order to keep family afloat.
13. Despite those challenges, the victim’s family has declined offers for Maslaha or Muslim compensation. Lastly, he drew the attention of the court to discrepancies in the pre-bail and pre-sentence reports by the Probation and Aftercare Service dated 22<sup>nd</sup> April 2025 and 7<sup>th</sup> March 2023 respectively.
14. There is then the mitigation tendered on behalf of the accused by his learned counsel, Mr. Farouk. In a synopsis, counsel submitted that the accused is very remorseful, a first offender and sickly. He submitted that it is the victim’s family that has refused Maslaha or reconciliation and it is thus unfair to say that the accused is not remorseful. He opined that any discrepancies in the two social reports above have been resolved by the latest client interview. Accordingly, he prayed for a lenient sentence aimed at “fairness, rehabilitation, redemption and restorative justice”.
15. I have perused the pre-sentencing report dated 22<sup>nd</sup> April 2025 under the hand of Albert Jaoko, Principal Probation Officer. There is no denying that it conflicts with the earlier pre-bail report. For instance, the age of the accused has now changed from 25 to 38, his family that could not be then traced



has now been found and there is no longer mention of a history of past criminal activity out of Kenyan jurisdiction. Nevertheless, the report recommends a custodial sentence.

16. I have taken into account that the accused is a first offender as per the CRO record dated 16<sup>th</sup> April 2025 from the National Police Service. He is also a family man. But his unrelenting anger led to loss of an innocent life over a mere dispute over who was entitled to supply water to the apartments that day. The deceased was unarmed and recovering from a surgery. He had previously shown great kindness by housing the accused in his family. Yet, the accused fished out a Somali sword from his clothing, stabbed him in the chest and quickly fled from the scene.
17. His conduct has now ended in needless anguish for the family of the deceased well captured in the preceding paragraphs. Sentence should be commensurate to the moral blameworthiness of the offender but also guided by the nature and gravity of crime. The fact that the accused used a sharp Somali sword in an unprovoked attack, aimed it at the deceased's chest, and speedily fled from the scene with the weapon is a major aggravating factor.
18. Manslaughter is a grave felony and attracts a sentence of up to life imprisonment. Justice in this case can only be served by an appropriate custodial sentence. It will also afford the accused an opportunity to further introspect and get anger counselling. I accordingly sentence the accused to serve ten (10) years in jail. In accordance with section 333 (2) of the *Criminal Procedure Code*, the sentence shall run from 4<sup>th</sup> December 2022, the date when he was first arrested and placed in custody.
19. The accused has a right of appeal to the Court of Appeal within 14 days and as per the *Rules of that Court* but only on the sentence. A copy of the proceedings and sentence shall be supplied to him immediately.
20. It is so ordered.

**DATED, SIGNED and DELIVERED at NAIROBI this 1<sup>st</sup> day of July 2025.**

**KANYI KIMONDO**

**JUDGE**

Ruling read virtually on Microsoft Teams in the presence of-

Accused.

Ms. Kigira for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. Farouk & Mr. Wachana for the accused.

Mr. Akello & Ms. Odongo for the victim's family instructed by Sheikh & Shariff Advocates.

Mr. E. Ombuna, Court Assistant.

