



**Republic v Kyalo (Criminal Case E046 of 2024)  
[2025] KEHC 9605 (KLR) (1 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9605 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITUI  
CRIMINAL CASE E046 OF 2024**

**LW GITARI, J  
JULY 1, 2025**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**DAVID MUOKA KYALO ..... ACCUSED**

**JUDGMENT**

1. The accused David Muoka Kyalo was initially charged with murder contrary to Section 203 and 204 of the *Penal Code* vide information dated 23/10/2024. The accused denied the charged. Later, the accused offered plea bargaining with the state and the state acceded to his offer. Through a plea-bargaining agreement, the charge of murder was reduced to Manslaughter.

2. The accused was then charged with Manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*. (Cap 63 Laws of Kenya). The particulars of the charge are that on the 9<sup>th</sup> day of October 2024 at Mangoloma Village Kiomo Location, Mwingi Central Sub-County, within Kitui County unlawfully killed Brian Kithu. The accused pleaded guilty to the charge. The facts in support of the charge are as follows:

The accused who was an eighteen (18) year old student at Kiome Secondary in Form 3, on 9/10/2023 accosted the deceased Brian Kithu a minor aged ten years and assaulted him with a stick all over his body. The assault was extended to the head causing fatal injuries. The deceased succumbed to the injuries. The accused ran away and hid in a nearby bush.

3. Members of public who heard screams accosted the accused and arrested him. A report made to the police who visited the scene and took photographs. The body was moved to Mwingi Level 4 Hospital where a Postmortem was done.

The doctor opined that the cause of death was as a result of brain damage – Intracranial Hemorrhage secondary to blunt trauma injury. The Postmortem Form was produced as exhibit 1.



4. The accused admitted the facts of the case readily. He was convicted on his own pleas of guilty. The prosecution urged court to treat the accused as a first offender.
5. In mitigation, the court was informed by his counsel that he was born on 21/06/2006 and was only eighteen years old at the time the offence was committed. He was a form three student. That the victim who was only ten years old was a close relative as he was his cousin. The father of the victim and the father of accused are brothers and live as close neighbors. That at the time of the commission of the offence, the accused caned the victim and caused his death. That there was no malice. That it was caning that went beyond and was extreme. That the accused was remorseful from the word go and had no intention to cause death.
6. He urged the court to find that the accused can be rehabilitated with proper guidance. It is against this background that the court is supposed to exercise discretion and pass the appropriate sentence in the circumstance. This court called for a social inquiry report on pre-sentence. The report states that the accused committed the offence in a state of insanity as he has a history of psychiatrist treatment.
7. He had however, stopped taking the medicine. Prior to committing the offence, he had attempted to commit suicide. It is also indicated that he is epileptic. The parents bear the blame for the accused's deteriorating mental condition as they did not follow up on treatment to ensure that he receives the necessary treatment. This rules out any form of rehabilitation under their case.
8. The accused has committed a serious crime due to a poorly managed mental health illness. This calls for a sentence where he will undergo treatment for the mental illness so that he is not a danger to himself and members of the society.
9. I find that the accused needs to be committed to an institution where he can receive treatment. The Probation Officer's report states that he requires strict supervision to ensure that he adheres to psychiatrist treatment. The accused has been guilty. I find that the law provides that where an accused person is guilty of an act or omission but was insane at the time the offence occurred the court is obligated to give directions under Section 166(2) of the *Criminal Procedure Code*. The provision states that he committed and be held in custody in such a place and manner as the court directs.
10. The accused needs to under go treatment. I therefore order that he be committed to Mathari Mental Hospital for treatment. Thereafter he be held in Prison at the president's pleasure and a report on the progress of his treatment be given after three years.

**DATED, SIGNED AND DELIVERED AT KITUI THIS 1<sup>ST</sup> DAY OF JULY 2025**

**HON. LADY JUSTICE L. GITARI**

**JUDGE**

