



**Republic v Masinde & another (Criminal Case 4 of 2010)  
[2024] KEHC 796 (KLR) (1 February 2024) (Sentence)**

Neutral citation: [2024] KEHC 796 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 4 OF 2010  
SC CHIRCHIR, J  
FEBRUARY 1, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**CLESTONE EKINA MASINDE ..... 1<sup>ST</sup> ACCUSED**

**CONSTANT EKINA WAWIRE ..... 2<sup>ND</sup> ACCUSED**

**SENTENCE**

1. The accused herein was charged with murder. After full trial, the court found that the murder charge was not established and convicted the accused of the lesser charge of causing grievous bodily harm on the deceased contrary to section 234 of the *Penal Code*.
2. A presentencing report was prepared and the parties were given a chance to submit. In mitigation, the accused submitted that he is remorseful, he is 66 years old and asks for leniency.
3. For the state, the prosecution seeks custodial sentence. The prosecution insists that this was a case of murder, and the accused only got away because of lack of post mortem Report.
4. I have perused the presentencing report and considered the submissions of both parties. The presentencing report indicates, that prior to the incident the accused was a person of sound character. He got on well with the community and held the position of the village elder. There was no prior criminal record.
5. The offence of causing grievous bodily harm attracts a sentence of up to life imprisonment. I have taken into consideration the foregoing submissions and the findings of the probation report.
6. I have further considered the fact that the accused has spent 7 years in custody.



7. In view of all the foregoing, I hereby sentence the accused to 3 years in prison, with effect from the date the date of conviction.

Right of Appeal, 14 days.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 1<sup>ST</sup> DAY OF FEBRUARY, 2024**

**S. Chirchir**

**Judge**

**In the presence of:-**

Mr. Rono- Court Assistant.

The Accused.

Mr. Munyeno for the Accused.

Mr. Liema for DPP

