



**Republic v Mathuba (Criminal Case E008 of 2022)  
[2024] KEHC 14589 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14589 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL CASE E008 OF 2022  
EM MURIITHI, J  
NOVEMBER 21, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**SAFARI JOHN MUTINDA MATHUBA ..... ACCUSED**

**RULING**

1. The accused was convicted of the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code following a plea bargain agreement reducing the initial charge of murder c/s 203 as read with 204 of the Penal Code.
2. The facts of the case which the accused admitted leading to the conviction are set out in paragraphs 9-17 of the Plea Bargain Agreement as follows:

“Facts

9. On the material day of 17th February, 2022 at around 2350 hours while Patrick Kyalo (D1), Daniel Maneno (D2) and John Mutambo (D3) were asleep in their rented room situated at Modogash township along Modogash - Garissa road. The said rented room is also used as a store by Jacob Auto garage which operates in front of that two roomed house.
10. Dr states that at the time- he was asleep, he was awakened by noises of people arguing outside the room. After listening carefully while lying on the bed, he realised that the two people arguing outside the room were familiar to him. The two people in question arguing were Safari John Mutinda (accused) and Mwanza Nzuki (deceased) both working at the garage.



11. D1 further stated that he heard the accused asking the deceased why he had taken away his needle and sewing thread. After a few moments, Dr heard the deceased screaming while complaining that the accused had stabbed him with a knife.
12. D1, D2 and D3 immediately rushed out of the room and found the deceased lying down on his left side while -holding the spot which had been stabbed. The accused later ran away.
13. D1, D2 and D3 rushed to Sericho police station where they made a report. After making the report, they returned to the scene of the crime and upon arrival found police had already arrived. Members of the public had gathered too but unfortunate the Mwanza Nzuki had succumbed to the injury
14. The body of the deceased was moved to Garissa County referral hospital morgue and on 18/02/2022 an autopsy was done which revealed that the cause of death was due to excessive haemorrhage following a stab wound noted at the left axillary region that resulted into vascular injury to a major blood vessel. The doctor further noted that the width of the wound was about 1cm and a depth of 4 cm.
15. On 18/02/2022 the accused was arrested by members of the public at his hide out and handed over to the police.
16. Police officers re-visited the scene together with the accused in search of the murder weapon but it was not recovered.
17. That it is light of the aforementioned that the accused pleads to the lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.”

3. The Probation Officer’s report recommended a non custodial sentence in the nature of Probation as follows:

“Conclusion

Your Lordship, before this court is a 32-year-old man from Kitui County. He is an orphan, having lost both parents when he was young. He has five siblings, and after their parents’ death, they were raised by relatives. Due to the hardships, he faced growing up, the offender dropped out of school in class three. He has been working since the age of 14, with his most recent employment being at a garage, where the murder occurred. The offender has two dependents, children aged six and three. He is deeply remorseful for his actions and regrets the incident, as the victim was a close friend, He attributes the tragedy to alcohol, as both he and the victim were intoxicated at the time, and believes that, had they been sober, they could have resolved their issues amicably. The offender states that he has since changed and has used his time in remand to reflect on his actions. He promises to become a better person. As such, he pleads with the court to consider granting him a non-custodial sentence, which he is open and willing to serve.

The offender’s family is very supportive and deeply regrets what happened. They sympathize with the victim’s family and, since the offender has been in custody, they have made efforts to reach out to them and pushed for reconciliation, which they have successfully facilitated.



Given the offender's remorse and the victim's family's forgiveness, they pray that the court will grant him a non-custodial sentence. The family is committed and ready to assist in his rehabilitation, ensuring he becomes a better person moving forward.

Both the offender and the victim are from the same area and had been friends since childhood. They lived and worked together, and the tragic incident occurred during a drunken fight, which led to the victim's death. The victim's family stated that the offender's family reached out to them, seeking reconciliation through the clan chairman and local administration. The matter was addressed traditionally, whereby the victim's family was to receive 14 cows as compensation from the offender, and a goat was slaughtered for both families to share a meal, symbolizing the removal of bad omen and the restoration of unity. The victim's family is satisfied with the compensation and has forgiven the offender. They hold no ill feelings towards him and do not object to a non-custodial sentence. In fact, they expressed that even if the court were to release the offender they would have no objections.

The offender and his family are well regarded in the community they come from. The community holds great trust in the clan elders, and once the elders resolve a matter, the community accepts it without harboring any ill will. Even if the offender is granted a non-custodial sentence, the community will remain at peace with the outcome.

The local leaders echoed the same sentiments as the clan leaders. The environment is not hostile, and he is ready to work with the probation office to help rehabilitate the offender.

#### Recommendation

Your Lordship, based on the information gathered above, I find the offender suitable for a non-custodial sentence, and a probation sentence is hereby recommended. During this period, guidance and counseling, as well as other rehabilitation interventions, will be offered. This recommendation is subject to the court's discretion.

Kibe C.W.

Probation Officer, Meru

30/10/2024.”

#### Mitigation

4. In mitigation, the accused pleaded for forgiveness stating that the deceased was his close friend. Counsel for the accused urged the Court to adopt the Probation Officer's report and promote restorative justice, as follows:

“Ms. Kinyanjui

I have seen the re-sentence report. The accused is 32 years old. He was orphaned at an early age and he started working at 14 years. He has no previous records. Deceased was his friend from the same village and went to Modagashe town together to work as mechanics. They worked together very well until he day of the incident when out of drinking they had fallen out and in the ensuing fight the victim was stabbed and unfortunately lost his life.

Mr. Safari is married with 2 children, a daughter at 6 years and at the time of arrest his wife was 7month's pregnant and now has a three- year old son. He was the sole bread winner for the family. He informs me that since arrest his wife has left although they were village mates. She left his home with the children. The Children are suffering. Accused is truly remorseful for the death of his friend. As per Kamba Custom, the accused family



approached the family of the deceased and restitution has been done. Accused requests court to take into consideration that the victim's family have forgiven him. We pray for a non-custodial sentence noting that the accused has been in custody since February 2022."

5. The DPP urged the court to pass a custodial sentence for the rehabilitation of the offender as follows:

"Mr. Masila

I have seen the report of 30/102024, which recommends a non-custodial sentence.

Drunkenness has led to loss of life. It is not the first case. The County is moving from land issue related deaths to death resulting from drinking spree. The Court should not condone such behaviour. Inasmuch as the two families have settled the issue in terms of restitution, what happens to the accused? Does it mean that he has been rehabilitated? We should not take killing lightly. For the Society to think that when out partying it is right if a disagreement happens to kill the other person and obtain a non-custodial sentence in court just like that!

When someone acts out of vengeance just because they have had a drink, it means they have a problem and to prevent such occurrences in the future, the person needs to be properly rehabilitated. It is as simple as that; to remain sober. It should not lead to death and for proper rehabilitation to occur a custodial sentence is necessary."

6. Drink-driven assaults leading to the death of the victims require to be discouraged by retributive deterrent penalty and the offenders treated for rehabilitation and reform to avoid recurrence and to discourage the acts of physical violence in such circumstances. The Court will seek to secure for the accused and his Society, simultaneously, retribution and deterrence and rehabilitation and reform! The settlement by the victim's and the offender's families is no bar to penal treatment. While the reconciliation, forgiveness, customary justice system may give opportunity to build a lasting peace between the victim's family and the accused and his family, the penal law objective of rehabilitation of the offender for his own sake and that of his community is not met. A response targeted to the accused himself is necessary. Rehabilitation and reformation do meet this requirement.
7. The Court considers that the prevalence of drink-driven fatal assault requires a deterrent custodial sentence and that even where the family of the victim and the offender are reconciled over the incident leading to the killing of a deceased person, the offender is required to be reformed into a law-abiding citizen. While accepting the findings of the Probation Officer as regards the reconciliation of the parties, the court is unable to accept the recommendation for a probation sentence in this case.

### **Pre-trial detention**

8. The accused has been in pre-trial detention since 6/3/2022, that is two (2) years and eight (8) months.

### **Rehabilitation**

9. Section 333 (3) of the Criminal Procedure Code proviso requires that where the court considers an imprisonment sentence – "where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody."
10. The provision codifies the wisdom that in detention before conclusion of the trial has some penal benefit, whether of retribution and deterrence, rehabilitation and reform, if it is agreed that reformation of the person could be triggered by the suffering in custody, even without structured rehabilitation programmes.



11. However, I should also agree with Counsel for the DPP that the most ideal rehabilitation will occur in the structured programmes of prison discipline imposed upon the conviction of the accused which surely places him under the instruction and control of the prison warders. In addition, the Court agrees that there must be something for the offender in the whole programme of penal treatment of the case. Even where reconciliation and restorative justice is encouraged, there should be some rehabilitative process for the benefit for the accused himself and the Society he lives in, as a whole.
12. In the circumstances of this case, the court considers that a custodial sentence of six (6) years, in addition to the pretrial detention period of two (2) years eight (8) months should afford the accused full opportunity for rehabilitation and reform.

### **Orders**

13. Accordingly, having convicted the accused for the offence of manslaughter contrary to sections 202 as read with 205 of the Penal Code, and taking into account that the accused has been in pre-trial detention for a period of two (2) years and eight (8) months the Court now sentences the accused to imprisonment for a further period of six (6) years commencing the date of this sentence.

Order accordingly.

**DATED AND DELIVERED THIS 21<sup>ST</sup> DAY OF NOVEMBER, 2024.**

**EDWARD M. MURIITHI**

**JUDGE**

Appearances:

Mr. Masila for DPP.

Ms. Kinyanjui for the Accused.

