



**Republic v Maweu (Criminal Case E026 of 2024)
[2025] KEHC 18985 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KEHC 18985 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL CASE E026 OF 2024
TM MATHEKA, J
DECEMBER 19, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

ONESMUS WAMBUA MAWEU ACCUSED

JUDGMENT

1. The accused person on Onesmus Wambua Maweu was charged with murder contrary to section 203 as read with section 204 of the penal code. The particulars were that on the night of 13th and 14th October he murdered Peter Kasimu At Siembeni Area, Kibwezi Subcounty.

He took plea on the 4th of November 2024 and pleaded not guilty.

2. On 3rd July 2025 the prosecution and the defense entered into a plea bargain agreement pursuant to section 137A(1) (a) of the criminal procedure code where the parties agreed to a lesser charge of manslaughter contrary to section 202 as read with section 205 of the penal code. I satisfied myself to the fact that the accused person understood the purport of a plea bargain agreement as required by section 137 F of the Act by taking the accused person through the following.

137F. Recording of plea agreement by court

(1) Before the court records a plea agreement, the accused person shall be placed under oath and the court shall address the accused person personally in court, and shall inform the accused person of, and determine that the accused person understands—

(a) the right to—

plead not guilty, or having already so pleaded, to persist in that plea; be presumed innocent until proved guilty; remain silent and not to testify during the proceedings; not being compelled to give self-incriminating evidence; a full trial; be represented by



a legal representative of his own choice, and where necessary, have the court appoint a legal representative; examine in person or by his legal representative the witnesses called by the prosecution before the court and to obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court on the same conditions as those applying to witnesses called by the prosecution;

- (b) that by accepting the plea agreement, he is waiving his right to a full trial;
- (c) the nature of the charge he is pleading to
- (d) any maximum possible penalty, including imprisonment, fine, community service order, probation or conditional or unconditional discharge;
- (e) any mandatory minimum penalty;
- (f) any applicable forfeiture;
- (g) the court's authority to order compensation under section 175(2)(b), restitution under section 177, or both;
- (h) that by entering into a plea agreement, he is waiving the right to appeal except as to the extent or legality of sentence;
- (i) the prosecution's right, in the case of prosecution for perjury or false statement, to use against the accused any statement that the accused gives in the agreement.

3. The charge of manslaughter was read to and explained to the accused person and he pleaded guilty.
4. The prosecution presented the facts: Briefly that they accused person owned a shop at Siembeni market and on the material night he drove from Kibwezi and passed by his shop. He found the accused person outside the shop. Being night time he wanted to know what he was doing there. He interrogated him and in the process of the interrogation a fight broke out between the two. The deceased sustained injuries and they accused took him into his motor vehicle and took him to Kibwezi Sub County Hospital. The accused was directed by the doctors to report the matter to the police and he went to Kibwezi police station and reported the matter VIDE OB 3 /14/10 /24. However, the deceased died while undergoing treatment and the body was taken to Makindu sub county hospital mortuary.
5. On 22nd of October 2024 a postmortem was conducted and the cause of death was determined to be injuries to the chest secondary to blunt force trauma. The prosecution produced the postmortem report as P exhibit #1 The accused person was charged with murder which was reduced to manslaughter through the plea bargaining agreement.
6. The accused person pleaded guilty to the facts and was convicted on his own plea of guilt.
7. The prosecution submitted that he was a first offender and the court requested for a presentence report.
8. The report indicated that there had been conversations between the clan of the accused and the clan of the deceased on the issue of compensation. That the clan of the accused person AMBUA and the clan of the deceased AMUUTI discussed and agreed to a compensation of 14 heads of cattle to the family of the deceased. It was reported that the AMBUA clan had already paid 11 head of cattle and one he goat.
9. Upon reading the report the court raised the concern that the children of the deceased and the immediate family members had not been mentioned in the report as it appeared as if the whole conversation had been held just between the clans without speaking to the immediate family and his children.



10. The court directed that a further report be filed indicating how the children would be taken care of through the said compensation.
11. A further report was filed indicating that in addition to the cattle, Ksh 500,000 would be paid towards the upkeep of the children of the deceased and that as at 9th of October 2025 the sum of Ksh 300,000 cash had been paid to Grace Mutethya Peter the widow of the deceased person towards the upkeep of the children of the deceased .The report listed 5 of them three of whom were minors in grade 6, 7 and 8 respectively.
12. In mitigation it was submitted that the two families had agreed to an out of court settlement and compensation to the family of the deceased, that the two families had accepted that the death of the deceased was as a result of an unfortunate incident and that there was no grudge existing between the two families.
13. It was also submitted that the accused person was a person whose character and antecedents, age and records were as follows: that at the time of the offence was 38 years old married with three minor children and he was the one upon whom the family depends, that he is in stable employment as a driver hence of good character and capable of abiding to lawful supervision should the court agree to his request to be placed on a non-custodial sentence ;that the probation officer had indicated in the report that the accused person would be supported to learn better conflict resolution skills as it was evident that the incident was as a result of poor conflict resolution skills where he had deemed that the person who he found outside his shop was a thief.
14. That the report confirmed that the accused person had expressed genuine remorse, had accepted responsibility and had accepted to undergo counseling on anger management and conflict resolution should the court to accept the recommendation as indicated under section 4 of the Probation of Offenders Act Cap 64 and to place the accused person on a non-custodial sentence of three years. The court was also referred to the Sentencing Policy Guidelines 2016 paragraph 4:1 to paragraph 4:2. (Counsel ought to be aware that these were revised in 2023) The court was also referred to Republic versus Abdi Jabir Ashid Osman 2024 KEHC (7873) KLR Whose circumstances were said to mirror the circumstances of this case and where the court allowed a non -custodial sentence .
15. I have carefully considered the submissions by counsel the two presentence reports , the fact that the prosecution has no objection to non-custodial sentence. I have also considered the mitigation by the accused person and the fact that the family of the deceased has been given some compensation. It is a fact that no compensation can bring back their father or the husband to the widow or the member of the family ,but the gesture by the accused person through his clan to the family of the deceased through their clan has in a way eased the pain of the family of the deceased as is clearly evident from the two reports . In addition the parties have complied with the directives of Article 159 of the Constitution that requires this court to encourage parties who have a dispute before the court to try out alternative ways of settling their dispute. As a result, other than the punishment meted out to the accused there is a form of restoration. It states ;
 - (2) In exercising judicial authority, the courts and tribunals shall be guided by the following principles
...alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted, subject to clause (3)
16. In this case the two clans have pursued the traditional dispute resolution mechanism for compensation for the death of a family member at the hand of another.



17. Traditionally clans are male centric and in directing the involvement of the widow and the immediate family , this was pursuant to Article 159(3) of *the Constitution*, to ensure that they did not violate Article 27 by discriminating against the wife and children. Clan Elders must be reminded that any settlement made pursuant to Article 159 of *the Constitution* must be in compliance with Article 27, on non-discrimination.

That said , what then is the appropriate sentence?

18. Considering the totality of the circumstances of this case, I will accept the recommendation and sentence the accused person to Probation Supervision for 3 years .

Orders accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY ON 19TH DECEMBER 2025

MUMBUA T MATHEKA

JUDGE

CA Chrispol

Kazungu for State

Mutava for Accused

Accused Present

