



REPUBLIC OF KENYA



**Makan v Republic (Criminal Appeal E124 of 2020)
[2025] KECA 2273 (KLR) (19 December 2025) (Judgment)**

Neutral citation: [2025] KECA 2273 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL E124 OF 2020
MS ASIKE-MAKHANDIA, HA OMONDI & LK KIMARU, JJA
DECEMBER 19, 2025**

BETWEEN

AMOS KIBET MAKAN APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an Appeal from the Judgment of High Court of Kenya at Bungoma,
(Riechi, J.,) dated 12th November, 2019 in HCCRC No. 2 of 2017)*

JUDGMENT

1. This is a first appeal against the judgment of the High Court of Kenya at Bungoma delivered on 12th November 2019 by Riechi J, wherein the appellant, Amos Kibet Makan, was arraigned and tried on the information charging him with murder contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars of the information were that the appellant murdered one, Enock Kibet Kwemoi, “the deceased”, on 23rd January 2017 at Chebaibi village, Kibuk Sub-location, Mt. Elgon Sub-County of Bungoma County. The appellant entered a plea of not guilty and the prosecution lined up a total of nine prosecution witnesses in a bid to establish the circumstances surrounding the death of the deceased and the appellant’s involvement.
3. Briefly stated the prosecution case was that on the morning of 23rd January 2017, the deceased left for school but never reached. His body was subsequently found lying on the road by boda boda riders with visible injuries to his head and nose. He was rushed to Kapsokwony Hospital, where he was pronounced dead on arrival.
4. Apparently, the previous day the deceased had an altercation with the appellant when he forcefully attempted to board a lorry the appellant was in against his wishes. Following the altercation, the appellant was heard threatening the deceased that dire consequences will follow the deceased for his



- actions. The following day, the appellant, waylaid the deceased as he walked to school and hit him with a stone, causing him to sustain fatal injuries.
5. A medical officer attached to Bungoma County Referral Hospital, produced the post-mortem report prepared by Dr. Wafula. The report indicated that the cause of death was determined to be severe head injury caused by blunt trauma. The appellant was subsequently arrested and the information proffered as aforesaid.
 6. In his defence, the appellant gave sworn testimony denying the information. He stated that on the material day he was loading luggage onto a lorry when the deceased attempted to climb on it. He restrained the deceased, who fell down. He denied hitting the deceased with a stone or stick and claimed he had no grudge against him.
 7. The trial court found that the prosecution had proved the fact and cause of death, and that the appellant was the person who inflicted the fatal injury. However, the court accepted the defence submission that the incident arose from provocation, noting prior conflict between the appellant and the deceased. Consequently, the trial court was persuaded that the evidence tendered disclosed the offence of manslaughter as opposed to murder on the basis of provocation. It accordingly reduced the information from one of murder to manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and upon conviction sentenced the appellant to twenty-five years imprisonment.
 8. Being aggrieved by both the conviction and sentence, the appellant, lodged the instant appeal. However, at the plenary hearing of the appeal, the appellant opted to abandon the appeal on conviction and pursue the appeal on sentence instead.
 9. At the hearing, the appellant was represented by Mr. Onyango Charles, learned counsel, while Ms. Mwaniki, learned Assistant Director of Public Prosecutions, was present for the respondent. Counsel for the appellant contended that the sentence of twenty-five years imprisonment imposed on the appellant was manifestly harsh and excessive as it failed to reflect the mitigating circumstances proffered by the appellant. Specifically, counsel emphasized that the appellant was a first offender, aged 27 years old at the time of the commission of the offence, remorseful, and an orphan, factors which, he submitted, ought to have informed a more lenient sentence by the trial court.
 10. In support of this position, counsel cited the cases of *Bonaya Tutu Ipu & Another v Republic* [2015] KECA 335 (KLR) and *John Onyango Obala v Republic* [2011] eKLR, where significantly lower sentences were imposed for manslaughter under comparable circumstances. He argued that the trial court did not apply the correct sentencing principles and failed to balance the gravity of the offence with the personal circumstances of the appellant and the context of provocation. Accordingly, counsel urged this Court to intervene and review the sentence downwards so as to reflect a fair and proportionate sentence.
 11. On her part, Ms. Mwaniki, submitted that the imprisonment term of 25 years was suitable in the circumstances, considering that the deceased was only aged 14 years old at the time. She asked the Court to consider the age of the victim and the fact that the appellant's response was not the proper one to a child who was just showing indiscipline by jumping onto a moving lorry. That the force applied was excessive and the appellant ought to have considered that this was a young child who was just having fun which could not have been harmful. Therefore, his action of throwing a stone at the deceased was quite an excessive act and therefore the sentence imposed was suitable. Counsel prayed that the sentence imposed by the trial court be maintained.



12. Where the appeal is confined to sentence, as in this case, the Court is enjoined to assess whether the trial court applied correct sentencing principles and whether the sentence imposed was lawful, proportionate, and just in the circumstances.
So, was the sentence of twenty-five years imprisonment excessive in light of the circumstances of the case and the mitigating factors presented?
13. The trial court found that the appellant acted under provocation and rightly convicted him of manslaughter. However, it proceeded to impose a lengthy custodial sentence without demonstrably weighing the appellant's personal circumstances. The appellant was a first offender, aged 27, remorseful, and an orphan. These factors, coupled with the context of provocation, ought to have informed a more tempered sentence.
14. In the case of *Bonaya Tutu Ipu & Another v Republic* (supra), this Court reduced a sentence for manslaughter to ten years, noting the presence of provocation and the offender's clean record. Similarly, in the case of *John Onyango Obala v Republic* [2011] eKLR, the Court held that failure to consider mitigating factors such as age, remorsefulness, and circumstances of the offence rendered the sentence legally unsound. The Court emphasized that it is within its mandate to correct such failures and substitute a more appropriate sentence. In the present case, the trial court did not expressly consider these factors, nor did it explain why a sentence of twenty-five years was warranted despite the finding of provocation.
15. While the loss of life is undeniably grave, sentencing must reflect both the seriousness of the offence and the offender's individual circumstances. The appellant has now served over eight years in custody since his arrest in January 2017. In our view, this period sufficiently reflects the punitive and rehabilitative objectives of sentencing in the context of manslaughter arising from provocation.
16. Accordingly, we are satisfied that the trial court erred in principle by failing to adequately consider the mitigating circumstances and the context of the offence. The sentence of twenty-five years was manifestly excessive. We therefore allow the appeal on sentence, set aside the sentence of twenty-five years imprisonment, and substitute it with a sentence equivalent to the term already served. The appellant shall therefore be set at liberty forthwith unless otherwise lawfully held.

DATED AND DELIVERED AT KISUMU THIS 19TH DAY OF DECEMBER, 2025

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

H.A. OMONDI

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

