

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL CASE NO. E004 OF 2024

REPUBLIC.....

.....PROSECUTOR

VERSUS

PETER GACHAU MAINA.....

ACCUSED

JUDGEMENT

1. The accused Peter Gachau Maina was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, cap 63 laws of Kenya. The particulars are that on 27th January 2024 at Karen, off Langata road, in Karen Sub-County, within Nairobi County murdered Skepha Kamau Githambo alias 'Kamaguna'. The accused pleaded not guilty to the charge.
2. However, following successful plea negotiations with the state, the accused pleaded guilty to a lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. He signed a plea agreement on 24th February 2025. The accused was therefore charged with the offence of manslaughter contrary to section 205 of the Penal Code cap 63 Laws of Kenya.
3. The brief facts, as outlined in the plea agreement, are as follows. The accused, the deceased, and one Paul Gikonyo Wanjeri alias Githinji were casual labourers at the Acacia Grill Let Construction Site, Nairobi, where they shared a single room and were friends. On the evening of 17th January 2024, at about 5.00 pm, Paul Gikonyo and the deceased left the site and went to Kabwangi, Karen, where they consumed alcohol. They met their supervisor,

Geoffrey Nyakundi, who bought them additional drinks. While drinking, the deceased complained that the accused was eating their food without contributing to the cost and stated his intention to beat him for that reason.

4. At about 11.00 pm, the deceased and Paul returned to the site and found the accused drinking outside the site manager's residence with Paul Njeru, the site manager. The deceased confronted the accused, called him a parasite, and ordered him to vacate their shared accommodation. Paul Njeru intervened, warned them to stop quarrelling, and directed them to retire to bed.
5. Inside the shared room, the deceased resumed the quarrel, which escalated into a physical fight. Paul Gikonyo fled and hid in an incomplete building nearby. The deceased pulled the accused from the bed and attacked him. The accused slapped the deceased, causing him to fall. The deceased followed the accused outside with a piece of wood bark. The accused overpowered him and struck him on the head and leg with a wooden plank fitted with nails, later produced as Exhibit 1. The deceased fell again. The accused then dragged him outside the gate, locked him out of the site, and returned to sleep, leaving him wounded.
6. From his hiding place, Paul Gikonyo heard the fight and a loud bang on a parked lorry. In the early hours of 18th January 2024, he returned to the room and found the accused asleep and the deceased missing. Later that morning, Pius Njeru informed Paul that the deceased was lying outside the gate. Together with Anthony Njenga, Paul brought the deceased inside. He was bleeding, in pain, and unable to speak. Paul changed his blood-

stained clothes and nursed his wounds. Paul Gikonyo, Pius Githinji, and Anthony Mwangi later left the deceased asleep and left the site.

7. That afternoon, the site owner, John Theuri, found the deceased unresponsive and directed that the matter be reported. Police officers attended the scene under OB No. 28/28/01/2024 at 4.45 pm, confirmed the death, and removed the body to City Mortuary. Scene of Crime Officers documented the scene, producing a bundle of 23 photographs and a report. The blood-stained wooden plank. The accused and Paul Gikonyo were arrested. Paul was later released after the accused admitted that he had struck the deceased during the altercation.
8. On 30th January 2024, the deceased's brothers, Danson Kyengo and Josephat Muiruri, identified the body at City Mortuary. A post-mortem conducted by Dr Ndegwa concluded that death resulted from multiple injuries due to blunt force trauma consistent with assault, documented in Post-mortem Report. Nail clippings, blood samples from the deceased, blood from the wooden plank, and the accused's buccal swabs were forwarded to the Government Analyst. Treatment notes for the accused's injuries were produced as Exhibit
9. A Government Analyst report dated 22nd May 2025, confirmed that the DNA profile from the blood-stained shorts and the wooden plank matched the deceased's blood and nail samples.
10. The accused was subjected to a mental assessment at Mathari Hospital and was certified fit to stand trial.
11. Upon reading the facts to the accused and after confirming that the plea-bargaining process was voluntary, that, the accused's

constitutional rights had not been violated during the negotiation process, and further that he was not coerced, the court accepted the plea agreement and convicted the accused accordingly.

12. In mitigation, learned counsel for the accused, Mr. Asitiba, submitted that the accused and the deceased lived and worked together as casual labourers and had a long-standing friendship. On the material day, after receiving their wages, they consumed alcohol. Counsel submitted that the deceased had earlier complained about the accused's failure to contribute to food expenses and had expressed an intention to beat him. It was the deceased who initiated the confrontation and became the aggressor.
13. The deceased picked a piece of wood and assaulted the accused, dragged him out of the room, and continued beating him as he pursued him outside. The accused acted in self-defence under provocation. He sustained injuries and was treated at Mbagathi Hospital. He admitted the assault and expressed deep remorse.
14. Counsel urged the Court to consider that the accused is a first offender, a father of two children, and comes from a humble background. He has strong family ties, as confirmed by the probation report, and his mother depended on him. He has been in remand for two years and has been cooperative throughout the proceedings. Further that the deceased's family has forgiven him, and the community is ready to accept him back. Counsel prayed for a non-custodial sentence.
15. In response, Ms. Timoi learned prosecution counsel submitted that this was a case in which the exercise of self-restraint would

have prevented the loss of life. Counsel acknowledged that both the deceased and the accused were intoxicated and that an altercation occurred. However, she emphasised that the accused's conduct after the fight was gravely culpable. After injuring the deceased, he dragged him outside and locked him out in the cold of the night, leaving him in a vulnerable state. The deceased's intoxication and the act of locking him out materially contributed to his death.

16. Counsel referred to the pre-bail report, which identified alcohol as a major contributing factor and recommended rehabilitation. She further submitted that the deceased had been supporting two elderly parents, who are now left to depend on other siblings.
17. It was contended that there had been no genuine or meaningful attempt at reconciliation. In the circumstances, the prosecution urged the Court to impose a custodial sentence that would allow for rehabilitation and serve to prevent a recurrence of similar conduct.
18. The deceased's elder brother, Josephat Muiruri Gathimbo, told the court that the deceased's death had greatly affected the family. The deceased was unmarried and was the sole provider for their elderly parents. He educated two of their siblings and brought the family to Nairobi. His death robbed the family of its main source of support, and Josephat has since been forced to assume responsibility for their parents.
19. He further stated that the accused had never reached out to explain what had happened, though he admitted at the DCI that he had killed the deceased. He confirmed that the accused's

family attempted to seek forgiveness and offer a token, but he declined and referred the matter to an elder.

20. In further response, Mr. Asitiba submitted that the issue of restraint cannot arise because the deceased was the aggressor. He and another followed the accused. He did not drag the deceased. There has been an attempt to reconcile but they have avoided meeting the family of the accused. They kept the father away from the accused's father.
21. The pre-sentence report on record indicates that the offender is a first-time offender whose life and decisions have been heavily influenced by a severe addiction to alcohol. At the time of the offence, he was intoxicated and has since acknowledged the role of his addiction in the commission of the violent act that led to the victim's death. His history is marked by pleasure-seeking tendencies that resulted in his estrangement from his wife and child and the abandonment of his domestic responsibilities. Despite this, he has taken full responsibility for his actions and is proactively seeking reform through counseling and rehabilitative programs while in custody. He urges the court to consider a non-custodial sentence, citing the unconditional support of his family and community in his journey toward sobriety.
22. The victim was a 47-year-old single man with no progeny, who was employed as a casual laborer at construction sites. His siblings, who acted as spokespersons, described a breakdown in relations with the offender's family, characterizing their attempts at outreach as demeaning and provocative. Consequently, no restitution has been offered or accepted.

23. The family expressed significant frustration at being excluded from the plea-bargaining process, attributing their lack of participation to an ignorance of the criminal justice system. While they request the court to decide based on the available evidence, they remain firmly opposed to a non-custodial sentence. Notably, the sentiments of the victim's parents are absent from this report as the siblings barred them from being interviewed.

24. The penal section for the offence of manslaughter is contained in section 205 of the Penal Code which provides: -

Any person who commits the felony of manslaughter is liable to imprisonment for life.

25. The court of Appeal in **Thomas Mwambu Wenyi v Republic (2017) eKLR** cited the decision of the Supreme Court of India in **Alistar Anthony Pereira v State of Maharashtra at paragraph 70-71** where the court held as follows on sentencing:

“Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. the courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the court must keep in mind the gravity of the crime, motive for the crime nature of the offence and all other attendance circumstances. The principle of proportionality in sentencing a crime doer is well

entrenched in criminal jurisprudence, As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including Social interest and consciousness of the society for award of appropriate sentence"

26. On the material day, Paul Gikonyo and the deceased left the work site at about 5.00 pm and went drinking where they were joined by their supervisor, Geoffrey Nyakundi, who bought them more alcohol. During the drinking, the deceased complained that the accused, with whom they shared accommodation, was eating their food without contributing and threatened to beat him. At about 11.00 pm they returned to the site and found the accused drinking with the site manager, Paul Njeru. The deceased confronted the accused, called him a parasite and ordered him to vacate the shelter. Paul Njeru intervened and ordered them to sleep. In the shared room, the deceased resumed the quarrel, dragged the accused from the bed and attacked him. Paul Gikonyo fled and hid nearby.
27. The accused slapped the deceased, ran outside, but was pursued with a piece of wood. He overpowered the deceased and struck him on the head and leg with a plank that had nails, then locked him outside the gate and went to sleep. In the morning, the deceased was found bleeding and unable to speak. He was brought inside, nursed briefly, but later failed to wake up when the site owner inspected the room.
28. The evidence suggests that the deceased was the initial aggressor and that the accused attempted to disengage and flee,

but was pursued by the deceased. It further emerged that a third party, Paul, fled the scene during the encounter. There was evidence of delayed medical treatment, which may have materially contributed to the deceased's death. The possibility that the fatal outcome could have been avoided with prompt intervention cannot be excluded. These factors do not absolve the accused of responsibility, but they are relevant to culpability, the absence of premeditation and the proportionality of sentence.

29. In sentencing, the Court has weighed the gravity of the offence against the principles of proportionality, deterrence and rehabilitation, together with the mitigation tendered and the views of the deceased's family. Although the accused sought a rehabilitative and non-custodial sentence, the Court must recognise that a life was lost through a violent act. The deceased, aged 47, was in the prime of his life, and his death has occasioned deep grief and a strong demand for justice from his family.

30. While the offence was not premeditated, it resulted in fatal consequences. The victim's family expressed distress not only at the loss but also at what they perceived as insensitive conduct by the offender's family, leading to a breakdown of reconciliation and harmony. The deceased's siblings further felt excluded from the process and urged the Court to determine the matter strictly on the evidence.

31. The Court must affirm the sanctity of human life. Although the accused is a first offender, admitted responsibility and has shown signs of rehabilitation, these factors cannot outweigh the gravity of the loss. The evidence indicates that substance abuse and

irresponsible conduct contributed to the violent encounter, and that immediate reintegration without a punitive element would be inappropriate.

32. Nonetheless, the mitigating context remains significant. The deceased was the aggressor, the accused attempted to withdraw, another participant fled the scene, and delayed treatment may have contributed to death. These factors support the conclusion that the death was not inevitable and could likely have been avoided, and that element of rehabilitation should form an integral part of the sentence.

33. In the circumstances, a custodial sentence is necessary to reflect the seriousness of the offence and to vindicate the value of human life, but it must be tempered with a rehabilitative component so as to balance punishment, deterrence and the prospect of reform.

34. The accused Peter Gachau Maina is hereby sentenced to serve five (5) years imprisonment to run from 28th January 2024, the date of his arrest pursuant to section 333(2) of the Criminal Procedure Code.

Orders accordingly.

**Judgement dated and delivered virtually this 21st January
2026**

**D. KAVEDZA
JUDGE**

In the presence of:

Ms. Timoi for the Prosecution

Mr. Astiba for the Accused

Ms. Karimi Court Assistant.