



**Karimi v Republic (Miscellaneous Criminal Application E030 of 2025)
[2026] KEHC 574 (KLR) (29 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 574 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CRIMINAL APPLICATION E030 OF 2025
AN ONGERI, J
JANUARY 29, 2026**

BETWEEN

PURITY KARIMI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of Hon. Obura (CM) in
Voi CMCC Case No. E167 of 2024 delivered on 3rd June 2025)*

JUDGMENT

1. The Appellant was convicted with the charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and she was sentenced to ten (10) years imprisonment.
2. The facts of the charge were that on 4th April 2024 at Maweni Area in Voi Sub-County within Taita Taveta, the Appellant unlawfully caused the death of Cosmas Mwashega Mghoi.
3. The Appellant pleaded not guilty to the charge and the prosecution called a total of 8 witnesses.
4. The prosecution evidence in summary was that on 4th April 2024 at around 10p.m, the deceased was drinking at Wangeci's bar within Maweni village in the company of one Faith Majali who testified as PW2.
5. The deceased had an argument with a man called Rasta. Shortly thereafter, the Appellant appeared with a stone and hit the deceased on the head.
6. The deceased bled profusely and he rushed out of the bar and went to the police station and later to hospital where the head injury was stitched and bandaged.
7. The deceased returned to his grandmother Elpina Nzighe who testified as PW1.



8. The following day at about 2p.m. PW2 noticed that the deceased was sleeping with a blood soaked bandage. The deceased told PW2 that the Appellant had hit him with a stone.
9. Shortly thereafter, the deceased rushed out of the house screaming that he was dying and in great pain.
10. He collapsed and hit himself against a wall. PW3 Hermaton Mwasi was alerted of the incident.
11. PW3 went to the home of PW1 and found the deceased lying down on the ground. PW3 called the police.
12. The Deputy OCS Voi Police Station, IP Nicodemus Dalu who testified as PW6 visited the scene in the company of DCI Officers.
13. The body of the deceased was taken to Moi County Referral Hospital Mortuary. Dr. Paul Mwambura did a post mortem on 10th April 2024.
14. PW8, PC David Maina from DCI Voi investigated the case and charged the Appellant with manslaughter.
15. The Appellant said while drinking at the joint, the deceased had an altercation with another person.
16. She said the deceased pushed Jay to the ground. She said she tried to assist Jay and the deceased also pushed her. She picked a stone and aimed at the deceased. She said the deceased was also throwing stones at her.
17. The Appellant said she went to hiding and other people tried to intervene. Later she was summoned by police and she was subsequently charged with this offence.
18. The trial court found her guilty as charged and sentenced her to ten (10) years imprisonment.
19. The Appellant has appealed against the conviction and sentence on the following grounds:-
 - i. That I am very remorseful for my actions and I humbly pray for leniency.
 - ii. That having a young child accompanying me in prison, the environment does not fully favor her upbringing.
 - iii. That its my humble prayer that this court considers that I was under the influence of alcohol and it was never intentional.
 - iv. My Lordship how I pray that this Honorable Court considers that I have a young family of FOUR children who solemnly depend on me. One is currently with me at prison and the other Two are in Tumaini Children's home.
 - v. My Lordship I humbly pray for a non-custodial sentence so I can be able to take care of my children as they are really suffering.
 - vi. That the sentence imposed on me was both harsh and punitive.
20. The parties filed written submissions as follows; The Appellant submitted that the conviction and sentence by the Trial Court were unsafe and should be set aside.
21. She contended that the learned Trial Magistrate erred in law by failing to adequately consider the Appellant's defence, which was that she intervened in an altercation, acted in self-defence by throwing a stone after being provoked, and then fled the scene without knowledge of any subsequent fatal events.



22. This defence, which raised reasonable doubt as to her role in causing the deceased's ultimate death, was dismissed without proper analysis, contrary to established principles requiring a court to weigh an accused's defence against the prosecution evidence.
23. Further, the conviction rested solely on the uncorroborated testimony of a single identifying witness, PW2, whose credibility was not critically examined for potential bias or mistake.
24. The dangers of such reliance, as underscored by precedent, were not sufficiently mitigated.
25. Additionally, the Trial Court failed to account for the material factor of intoxication, which was evident on record and relevant to the question of the Appellant's specific intent to cause harm.
26. Finally, the prosecution failed to conclusively establish causation. The evidence revealed two distinct potential causes for the fatal head injury, the alleged stone, throwing incident and a subsequent fall days later, creating a broken chain of causation.
27. In such circumstances, the benefit of the doubt must be accorded to the Appellant. For these reasons, the Appellant prays that this Court allows the appeal, quashes the conviction, and sets aside the sentence.
28. The Respondent's submissions contend that the Appellant's conviction for manslaughter and subsequent ten-year sentence were justified and based on evidence proved beyond a reasonable doubt.
29. The prosecution established through witness testimony, particularly that of PW2, that the Appellant struck the deceased on the head with a stone during an altercation at a bar, an act which was the sole cause of the assault.
30. This account was corroborated by the dying declaration of the deceased, as related by PW1, which directly identified the Appellant as the assailant.
31. The causal link between this assault and death was confirmed by the post-mortem report, which concluded the cause was severe head injury due to blunt force trauma, with no other contributing factors.
32. The Respondent argues that the Appellant's defense of intoxication was unsubstantiated, as she failed to discharge the burden of proof required to support such a claim under the law.
33. The sentence imposed was deemed appropriate and lenient, considering the circumstances of the offense and the mitigating factors presented.
34. Consequently, the Respondent urges the Court to dismiss the appeal and uphold the trial court's judgment in its entirety.
35. The central issue for determination in this appeal is whether the prosecution proved the charge of manslaughter against the Appellant beyond a reasonable doubt, with particular regard to the elements of the unlawful act and causation, and whether the Appellant's defence was properly considered.
36. This court has carefully considered the record of the trial court, the grounds of appeal, and the submissions of both parties.
37. The Appellant was convicted with manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
38. The same requires proof of an unlawful act or omission causing the death of another.



39. The evidence adduced by the prosecution, particularly the testimony of PW2 who was an eyewitness present at the bar, placed the Appellant at the scene and identified her as the person who struck the deceased on the head with a stone.
40. This account was materially consistent and was corroborated by the deceased's own statement to PW2 the following day, which operates as a dying declaration.
41. A dying declaration, if found to be truthful and made in the realization of impending death, is reliable evidence.
42. In this case, the deceased's identification of the Appellant as his assailant was clear and direct.
43. On the critical element of causation, the post-mortem report by Dr. Paul Mwambura concluded that the cause of death was "severe head injury secondary to blunt force trauma."
44. This medical evidence directly linked the fatal injury to the assault perpetrated by the Appellant.
45. The Appellant's contention that the death may have resulted from a subsequent fall days later is not supported by any evidence on record.
46. The chain of events from the assault, the deceased seeking medical attention, his subsequent deterioration, and his death is unbroken.
47. Where an unlawful act is committed which is likely to injure another person, and which does in fact cause death, then irrespective of whether the injury was intended, the person committing the act is guilty of manslaughter.
48. The Appellant's act of hitting the deceased on the head with a stone was palpably dangerous and unlawful, and it set in motion the sequence that led to death.
49. Regarding the Appellant's defences, the trial magistrate was duty-bound to consider them, and the judgment indicates this was done.
50. The defence of self-defence was rightly rejected. The force used must be reasonable and proportionate to the threat faced. Picking up a stone and striking someone on the head in response to a push, as the Appellant described, cannot be deemed proportionate or reasonable force.
51. On the defence of intoxication, the Appellant bore the burden of proving, on a balance of probabilities, that she was so intoxicated as to be incapable of forming the specific intent necessary for a crime.
52. This burden was not discharged, as her own testimony demonstrated a clear recollection of events and a deliberate aim in throwing the stone.
53. Mere consumption of alcohol, without proof of incapacity to form intent, does not constitute a defence to manslaughter, as manslaughter does not require a specific intention to kill.
54. In the final analysis, the prosecution evidence was consistent, cogent, and proved the charge against the Appellant to the required standard.
55. The Appellant's defences were properly evaluated and found wanting.
56. Consequently, the appeal against conviction lacks merit and is hereby dismissed.
57. Regarding the sentence, this court has given due consideration to the totality of the circumstances.
58. The Appellant is a first offender, a factor expressly recorded by the trial court.



59. This is a significant mitigating factor that must be accorded substantial weight.
60. Furthermore, the evidence on record indicates that the fatal act arose from a spontaneous altercation in a drinking establishment.
61. There is no evidence of premeditation or any pre-existing vendetta between the Appellant and the deceased.
62. The act, while grievous in its consequence, appears to have been an impulsive reaction in a heated moment.
63. While the offence of manslaughter is undoubtedly serious, the custodial sentence must be proportionate not only to the offence but also to the circumstances of the offender.
64. The objective of sentencing includes rehabilitation, particularly for a first-time offender.
65. The Appellant's personal circumstances, particularly her responsibility for four young children, including one accompanying her in prison, add a profound layer of hardship that, while not exculpatory, must be considered in the overall interest of justice and the welfare of innocent dependents.
66. In view of the foregoing, this court has taken into consideration the following factors;
 - (i) The Appellant's status as a first offender;
 - (ii) The absence of premeditation or personal vendetta;
 - (iii) The spontaneous nature of the offence; and
 - (iv) The compelling mitigating factors pertaining to her family responsibilities.
67. This court finds it appropriate to exercise its discretion to review the sentence imposed. The sentence of ten (10) years imprisonment is hereby set aside and substituted with a sentence of five (5) years imprisonment.
68. The sentence shall run from the date of the Appellant's first date of alignment in court being 26th of April 2024.
69. Orders to issue accordingly.

DATED, SIGNED AND DELIVERED THIS 29TH DAY OF JANUARY 2026 VIRTUALLY AND IN OPEN COURT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE

In the presence of:-

Court Assistant: Millicent/ Mabishi

State Counsel: Mr. Ngigi

The Applicant

