

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. E155 OF 2025

Soud Accram Jasho.....
.....APPELLANT

V E R S U S

REPUBLIC
...RESPONDENT

(Being an appeal against the conviction and sentence delivered by Hon. M. Murage (P.M) on 13th October 2025 at Kibera High Court Criminal Case No. E929 of 2020, Republic vs. Soud Accram Jasho)

JUDGEMENT

1. The appellant was charged with the offence of manslaughter contrary to Section 202 as read with 205 of the Penal Code. Particulars were that the appellant on the 14th August 2020, at Kawangware Amboseli area in Dagoretti sub county within Nairobi county unlawfully caused the death of Francis Manunu Makokha. He was sentenced to serve thirty (30) years imprisonment.
2. Aggrieved, he filed an appeal challenging his conviction and sentence. In the petition of appeal, the appellant raised 22 grounds which have been coalized as follows. The appellant challenged the totality of the prosecution's case against which he was convicted. The appellant argued that the trial court failed to give due weight to his defence. The appellant contended that the sentence imposed was harsh and excessive. He urged the court to quash the conviction and set aside the sentence imposed.
3. This being a first appellate court, this court is required to conduct a fresh and exhaustive evaluation of all the evidence tendered in the lower court and to come to an independent

conclusion as to whether or not to uphold the conviction and sentence. However, as I do so, I do bear in mind that I did not have the advantage (as the learned trial magistrate had) of hearing and seeing the witnesses and I give allowance for that. (See **Okeno vs Republic 1972 (EA) 32**).

4. The prosecution called eight witnesses in support of its case, while the appellant gave sworn evidence in his defence.
5. PW1, Margaret Waithera, the appellant's mother, testified that on 14th August 2020 at about 9.30 pm she was asleep when she heard the appellant speaking in distress. She went outside and found the appellant lying on the ground with one person on top of him and others kicking him from either side. The individuals later disengaged and exchanged blows. She pleaded with them to stop and asked her daughter to call the police. One of the individuals knelt on the road and uttered words to the effect that he would not repeat his actions. The group thereafter left. PW1 did not see any weapon. She later learnt from the appellant that one of the individuals had collapsed and died after being taken to hospital.
6. PW2, Sarah Accram, testified that at about 9.30 pm she heard commotion outside and went out with PW1. She found the appellant engaged in a fight with a group of about five individuals. One person was on top of him while others stood nearby. They intervened and separated them. The group later walked away. PW2 did not observe any weapon. She later learnt that one of the individuals collapsed a short distance away and that there was a stab wound.
7. PW3, Rosemary Danso Asara, testified that on 15th August 2020 she received information that her brother, the deceased Francis Manono Makokha, had died. She proceeded to the scene and

later reported the matter at Muthangari Police Station. She did not witness the incident and did not know the cause of death.

8. PW4, Corporal David Bitok, testified that on 15th August 2020 he responded to a report at Amboseli area in Kawangware. He found a large crowd at the appellant's residence, some of whom were vandalising the house and demanding the appellant. Police reinforcement was called, the crowd dispersed, and the appellant was secured and taken to the police station. He confirmed that the incident arose from a fight involving the deceased, who later died.
9. PW5, Benson Kimani, testified that on the night of 14th August 2020 he heard commotion and went to investigate. He found the deceased lying on the ground holding his stomach and appearing injured. He observed fluid and blood from the stomach area. Together with another person, he placed the deceased in a motor vehicle and took him to Mary Immaculate Hospital, where he was pronounced dead. He later learnt that the appellant was implicated in the incident.
10. PW6, Edwin Wanjala Brown, testified that on 14th August 2020 at about 9.00 pm he was with the deceased when they went to visit a friend residing at the appellant's plot. At the gate, they found the appellant using his phone. The deceased approached to look at the phone, whereupon the appellant reacted by pushing him. A confrontation ensued, leading to a physical fight in which the deceased overpowered the appellant.
11. The appellant then went into his house and shortly returned. He approached the deceased, embraced him, and stabbed him on the left side near the stomach. The appellant then withdrew the knife. As they walked away, the deceased collapsed after a few metres. PW6 attempted to assist him and sought help. The deceased was taken to hospital where he was pronounced

dead. PW6 stated that there was sufficient lighting and that he clearly saw the appellant stab the deceased.

12. PW7, Dr. Peter Muriuki Ndegwa, testified that he conducted a post-mortem examination on 19th August 2020. He observed a penetrating stab wound to the left lower abdominal region and approximately three litres of blood in the abdominal cavity. He formed the opinion that the cause of death was haemorrhage due to severe abdominal injuries resulting from a single stab wound inflicted by a sharp object.
13. PW8, Police Constable James Munyaka, the investigating officer, testified that he was assigned the case on 16th August 2020. He recorded witness statements and attended the post-mortem. He stated that investigations established that the deceased and PW6 had gone to the appellant's residence where a disagreement arose, leading to a fight. The parties were separated, after which the appellant went into his house, returned, and subsequently stabbed the deceased. The deceased later collapsed and died while being taken to hospital. The appellant had earlier reported an assault incident. The weapon used in the stabbing was not recovered.
14. In his sworn defence, the appellant testified that on 14th August 2020 at about 9.30 pm, upon arriving home, he received a phone call while within the compound. He then encountered four individuals, two of whom approached him. One, described as short and wearing a vest, demanded his phone, stating, "Nataka simu yako." The appellant placed the phone in his pocket, whereupon he was struck and attacked by the individuals as he resisted. He raised alarm by shouting "wezi".
15. He testified that his mother and sister came out of the house and intervened, calling upon the assailants to stop and

threatening to call the police. The individuals thereafter walked away while the appellant defended himself using his hands. He stated that the group left in the direction of Katina. The appellant further stated that he reported the incident at a police post and was advised to report at Muthangari Police Station, which he did the following morning. He also sought medical attention at Mediheal Hospital.

16. The following day, he found a crowd at his residence, which was later dispersed by police. He was informed that one of the individuals involved in the incident had died. He denied prior knowledge of the deceased and denied being armed with a knife. On cross-examination, the appellant stated that he did not produce any Occurrence Book extract, medical report, or P3 form to support his claim of injuries.

17. After a full trial, the appellant was convicted and sentenced accordingly.

18. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.

19. Section 202 of the penal code provides:

"(1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.

(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm."

20. Section 205 of the penal code reads:

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

21. This Court enunciated what constitutes murder in Joseph Kimani Njau v R (2014) eKLR thus:

“Before an act can be murder, it must be aimed at someone and in addition, it must be an act committed with one of the following intentions, the test of which is always subjective to the actual subject;

- i. The intention to cause death;*
- ii. The intention to cause grievous bodily harm;*
- iii. Where the accused knows that there is a serious risk that death or grievous bodily harm will ensue from his acts, and commits those acts deliberately and without lawful excuse with the intention to expose a potential victim to that risk as the result of those acts.*

It does not matter in such circumstances whether the accused desires those consequences to ensue or not...”

22. The requisite element of “**intention**” constitutes the ingredient of “malice aforethought”, which is defined in section 206 of the Penal Code in the following terms:

- a. An intention to cause death or to do grievous harm to any person whether such person is the person actually killed or not.**
- b. Knowledge that the act or omission causing death of or grievous harm to some person, whether such person is the person killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not or by a wish that it may be caused.**
- c. An intent to commit a felony.**

d. An intention to facilitate the escape from custody of a person who has committed a felony.

23. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.

24. The prosecution case rested on both direct and circumstantial evidence. PW6, an eye witness, gave a clear and consistent account that the appellant engaged the deceased in a confrontation, briefly retreated, armed himself with a knife, returned, and stabbed the deceased on the left side of the abdomen. His evidence placed the appellant at the scene and directly linked him to the fatal act. The conditions for identification were favourable and his testimony remained unshaken.

25. As stated in **Anjononi & others -vs- Republic (1976-80) 1 KLR 1566 at page 1568:**

“Recognition of an assailant is more satisfactory, more assuring, and more reliable...”

26. The medical evidence by PW7 confirmed a penetrating stab wound to the abdomen, leading to massive internal haemorrhage and death. This evidence corroborated the eye witness account as to the nature of the injury and the force applied.

27. The appellant’s mother (PW1) and sister (PW2), who were present at the scene, testified that there were multiple assailants. PW1 referred to three individuals while PW2 spoke of five, and the appellant in his defence mentioned four. This inconsistency as to the number of persons present does not dislodge the prosecution case. The central issue remains the identity and conduct of the appellant. Both PW1 and PW2 confirmed that the appellant was involved in the altercation.

Their evidence supports the occurrence of a violent confrontation and places the appellant at the scene. The variance in numbers is a minor inconsistency which does not go to the root of the prosecution case.

28. Further, although the murder weapon was not recovered, the absence of the knife is not fatal. The eye witness account, coupled with the medical findings and the surrounding circumstances, sufficiently established that a sharp object was used to inflict the fatal injury. The chain of events from the altercation to the collapse and death of the deceased forms a consistent and unbroken narrative pointing to the appellant.
29. The appellant's defence was that he was attacked by unknown persons who attempted to rob him and that he acted in self-defence. This defence was duly considered and rejected. There was no credible evidence to support the alleged robbery or the presence of armed assailants. His version was inconsistent with the prosecution evidence and unsupported by medical or other independent evidence.
30. On the question of intent, the circumstances disclose a sudden confrontation which escalated into violence. In **Nzuki vs Republic, (1993) KLR 171**, the Court emphasised that proof of malice aforethought is essential for a conviction of murder. The evidence herein does not demonstrate premeditation or a clear intention to cause death. Further, in **Mbugua Kariuki Vs Republic, [1976-80] 1 KLR 1085** and **Republic Vs Gachanja, [2001] KLR 428**, it was held that adequate provocation, especially when coupled with self-defence, may reduce a charge of murder to manslaughter. Section 207 of the Penal Code provides:

“When a person who unlawfully kills another under circumstances which, but for the provisions of this section,

would constitute murder, does the act which causes death in the heat of passion... is guilty of manslaughter only."

31. In **Mancini Vs Director of Public Prosecutions, [1941] All ER 272**, it was held that provocation must be such as to temporarily deprive an accused person of self-control. Applying that principle to the present case, the evidence suggests that the incident arose from a spontaneous altercation rather than a premeditated attack. The evidence further indicates that the appellant was assaulted by a group of persons, although the exact number, whether three or five, remains unclear owing to inconsistencies in the testimony, and that the fatal blow was inflicted in the course of that confrontation.

32. The totality of the evidence establishes that the appellant unlawfully caused the death of the deceased. The conviction for manslaughter was proper and supported by the evidence.

33. Accordingly, the appeal is dismissed in its entirety. The conviction was proper and is upheld.

34. The appellant was sentenced to serve thirty (30) years imprisonment. In the case of **Wanjema vs. Republic (1971) E.A. 493** the court stated as follows: -

"An appellate court should not interfere with the discretion which a trial court has exercised as to the sentence unless it is evident that it overlooked some material factors, took into consideration some immaterial fact, acted on wrong principle or the sentence is manifestly excessive in the circumstances of the case."

35. I have carefully considered the circumstances of this case, the severity of the offence, the principles of proportionality, deterrence and rehabilitation and as part of the proportionality analysis, the mitigating and aggravating factors, and the scar the incidence left in the life of the victim. I have also considered

the purpose of sentencing and the principles of sentencing under the common law.

36. From the record, the appellant is a first offender, has shown genuine remorse for his actions, and there is no evidence of prior violent conduct. The killing occurred in the context of a spontaneous confrontation rather than premeditated intent, and the appellant's conduct, while unlawful, did not demonstrate the degree of moral culpability ordinarily associated with longer sentences for homicide. These factors, combined with the appellant's age, character, and the absence of prior criminal record, justify a reduction in the term of imprisonment. Considering the need to balance retribution, deterrence, and rehabilitation, I find that the sentence imposed by the trial court was excessive.

37. In the premises, the sentence of thirty (30) years' imprisonment is hereby set aside and substituted with a sentence of five (5) years' imprisonment together with a further three (3) years' probation upon completion of the custodial term. The sentences shall run from the date of conviction. The appellant shall also undergo counselling and anger management programmes during the period of sentence.

Orders accordingly.

**Judgement dated and delivered virtually this 9th day of
April 2026.**

**D. KAVEDZA
JUDGE**

In the presence of:

Appellant Present

Mr. Mutuma for the Respondent

Karimi Court Assistant.

ORIGINAL FILE COPY