

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KIBERA**  
**CRIMINAL CASE NO. 7 OF 2023**

**REPUBLIC.....PROSECUTOR GENERAL**  
**ON**

**VERSUS**

**SHAHID JABIR ISMAEL.....1<sup>ST</sup>**  
**ACCUSED**

**JUMAN HAMISI KINYANJUI alias KAKA.....2<sup>ND</sup>**  
**ACCUSED**

**JUMA HUSSEIN MOHAMMED OMAR alias MACHO.....3<sup>RD</sup>**  
**ACCUSED**

**BRIAN KENANI alias KASILO alias**  
**FAZUL.....4<sup>TH</sup> ACCUSED**

**JUDGEMENT**

1. Shahid Jabir Isamel was jointly charged with murder under Section 203, as read with Section 204 of the Penal Code. The charge alleged that, between the night of 3rd and 4th April 2020, in Kibera, Nairobi County, he and others not before the court murdered Mohammed Hassan Marjan.
2. The 1<sup>st</sup> accused entered into plea negotiations with the state, resulting in a plea agreement. He pleaded guilty to the lesser charge of manslaughter under Section 202, as read with Section 205 of the Penal Code. The revised charge stated that, on the night of 3rd and 4th May 2020, in Kibera, he and others unlawfully killed Mohammed Hassan Marjan.
3. The facts of the case reveal that, at around 2:30 am, the 1<sup>st</sup> accused and his accomplices confronted the deceased as he

walked home from work. The deceased, a radio presenter at Pamoja Community Radio in Olympic, Kibera, had earlier been seen at the home of Mwanaisha Mzee, where the 1<sup>st</sup> accused and others had gathered for Ramadan celebrations before leaving at midnight.

4. At the Makina area, they spotted the deceased walking alone with a bag. They assaulted him, robbed him of a power bank, mobile phone, laptop bag, and radio, and then stabbed him in the chest before fleeing. The incident was captured on CCTV via the National Police Service's Integrated Communication, Command, and Control Centre (IC3). After the attack, the group shared the stolen items. The accused was later arrested.
5. A mental assessment report confirmed he was fit to stand trial. The court informed him of his constitutional rights, and he affirmed that he had pleaded guilty voluntarily and without coercion.
6. In mitigation, Mr. Onyore for the 1<sup>st</sup> accused submitted that the 1<sup>st</sup> accused currently 18 years old and has spent approximately five years in custody. It was urged that he has spent his formative years in custody, a factor that ought to weigh significantly in favour of a rehabilitative sentence.
7. Counsel outlined his difficult upbringing. He is the son of the late Ishmael and Rehema, a Ugandan national. Following his mother's death in 2015 and his father's death in 2017, he was moved between Uganda and Kenya and eventually came under the care of his maternal grandmother. It was submitted that he lacked stable parental guidance during a critical stage of his development, rendering him emotionally and socially vulnerable and susceptible to negative peer influence. At the time of the

offence, he was intoxicated, which was said to reflect immaturity and impaired judgment rather than premeditation.

8. It was further submitted that he is a first offender who has taken responsibility for his actions, expressed genuine remorse, and acknowledged the consequences of his conduct. While in custody, he has engaged in rehabilitation and acquired vocational skills in tailoring, soap making, and music, demonstrating a commitment to reform. He expressed fear of exposure to hardened criminal influences in adult prison and pleaded for an opportunity to rebuild his life. A non-custodial or otherwise lenient, rehabilitative sentence was urged.
9. The victim's family, through Zubeda Hassan Narjan, expressed the profound impact of the deceased's death, noting that he was the family's breadwinner, leaving behind a wife and children. She indicated that forgiveness could not be extended without broader family consultation.
10. For the State, Ms. Maina it was acknowledged that the 1<sup>st</sup> accused is a first offender who entered into a plea-bargaining agreement, thereby saving judicial time and demonstrating acceptance of responsibility. It was noted that he had been in custody for five years since his arrest as a minor, and that his co-accused Brian Kenani had received a custodial sentence of seven years, which should guide parity in sentencing. The prosecution urged the Court to balance the victims' loss with the accused's need for rehabilitation, bearing in mind Article 53 of the Constitution and the principles under the Children Act, which emphasise the best interests of the child and a reformatory approach.

11. The presentence report indicates that the offender is an 18-year-old male who has spent five years in custody, having been admitted as a minor. He was orphaned early, dropped out of school at Class Five, and developed truant behaviour. While at Kamiti Youth Correctional and Training Centre, he acquired basic technical skills. He has no prior criminal record, has accepted responsibility, expressed remorse, and seeks leniency. He was previously dependent on bhang and was intoxicated at the time of the offence. His family supports a non-custodial sentence, though concerns remain about his vulnerability to reoffending.
12. The deceased was a family man and sole breadwinner with three children, and a respected religious leader. His death has caused significant hardship. No restitution had been made, and the family expressed dissatisfaction at being excluded from plea bargaining, leaving sentencing to the Court.
13. The report attributes the offence to poor upbringing, drug abuse, and negative peer influence. It recommends structured rehabilitation and community support, noting that a non-custodial sentence may aid reintegration, subject to appropriate safeguards.
14. 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.**
15. The court of Appeal in **Charo Ngumbao Gugudu -vs- Republic [2011] eKLR** held as follows: -  
*“Further the law is that sentence imposed on an accused persons must be commensurate in the moral blame worthiness of the offender and that it is thus not proper*

*exercise for the court to fail to look at the facts and circumstances of the case in their entirety before setting for any given sentence (See Ambani -vs- Republic (1990) eKLR.)”.*

16. In sentencing, the Court has carefully considered the peculiar circumstances of the 1st accused. It is not in dispute that he committed the offence while still a minor, at a formative and impressionable stage of his life, where susceptibility to peer influence is significantly heightened. The Court takes judicial notice of the fact that offences committed in group settings, particularly at such a young age, are often influenced by collective conduct and impaired judgment rather than individual premeditation.
17. The 1<sup>st</sup> accused has since spent approximately five years in custody, a period which is substantial, especially considering that it spans his transition from childhood into adulthood. During this time, he has undergone rehabilitation, acquired skills, and demonstrated a measure of reform. He is a first offender with no prior criminal record, has taken responsibility for his actions, and has expressed genuine remorse. These factors weigh heavily in favour of a rehabilitative rather than punitive approach.
18. The Court has equally borne in mind the grave and irreversible loss suffered by the deceased's family. The deceased was a productive member of society, and his death has occasioned profound emotional and economic hardship to his dependants. That loss cannot be understated.
19. Sentencing must balance the objectives of punishment, deterrence, rehabilitation and proportionality. In cases involving child offenders, the Court is enjoined to accord primacy to the

best interests of the child, with particular regard to rehabilitation and eventual reintegration into society. The 1st accused committed the offence while a minor, has since spent a considerable period in custody, and has demonstrated remorse and rehabilitative progress. He lacks a stable family support system to facilitate reintegration.

20. The Court is satisfied that a structured sentence, incorporating supervision and support mechanisms, will sufficiently meet the ends of justice, while promoting accountability and facilitating reintegration.

21. Accordingly, having taken into account the five (5) years the 1st accused, Shahid Jabir Ismael, spent in remand custody, he is hereby sentenced to two (2) years' imprisonment and a further one (1) year under probation for reintegration, to be supervised by the Kibera Probation Officer. The twin sentences shall run from the date of this Judgment, namely 9<sup>th</sup> April 2026. The Officer in Charge of the prison shall ensure that the convict undergoes vocational training during his term of imprisonment.

Orders accordingly.

**Ruling dated and delivered virtually this 9<sup>th</sup> day of  
April 2026**

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**D. KAVEDZA  
JUDGE**

**In the presence of:**

Accused Present  
Ms. Timoi for the Prosecution  
Karimi Court Assistant.