



REPUBLIC OF KENYA



KENYA LAW
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**Republic v Ismael & 3 others (Criminal Case 7 of 2023)
[2025] KEHC 3712 (KLR) (26 March 2025) (Sentence)**

Neutral citation: [2025] KEHC 3712 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL CASE 7 OF 2023
DR KAVEDZA, J
MARCH 26, 2025**

BETWEEN

REPUBLIC PROSECUTION

AND

SHAHID JABIR ISMAEL 1ST ACCUSED

JUMAN HAMISI KINYANJUI ALIAS KAKA 2ND ACCUSED

JUMA HUSSEIN MOHAMMED OMAR ALIAS MACHO 3RD ACCUSED

BRIAN KENANI ALIAS KASILO ALIAS FAZUL 4TH ACCUSED

SENTENCE

1. Brian Kenani, alias Kasilo or Fazul, was 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 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 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 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).
5. After the attack, the group shared the stolen items. The accused remained at large for eight months before being arrested in Kibra and arraigned in court.
 6. 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.
 7. In mitigation, his counsel argued that he was under the influence of cannabis at the time, which he had consumed at Mwanaisha's house. It was also stated that he came from a dysfunctional family and survived on odd jobs.
 8. Ms. Maina, for the state, acknowledged that the accused had saved the court's time but called for a sentence that considered his criminal history. However, the court noted that evidence of previous offences was unclear. The accused admitted to having been committed to a Borstal institution for four months for theft.
 9. Having reviewed the prosecution records, I concur with Ms. Chepseba that, aside from the accused's time in a Borstal institution, the other records lack accuracy and will not be considered by this court.
 10. The presentence report dated 29th January 2025 recommended institutional rehabilitation as a deterrent. However, I disagree with the probation officer's approach. The accused is a victim of societal failure. He was introduced to drugs as a minor and came from a dysfunctional family. While his peers were in school, he was placed in a Borstal institution for theft. Society bears responsibility for how he developed into adulthood.
 11. I therefore reject the notion that imprisonment should serve solely as a deterrent. Instead, it should provide an opportunity for rehabilitation and vocational training, ensuring that upon release, he does not re-offend due to unemployment.
 12. Furthermore, the accused requires rehabilitation, given that his drug addiction contributed to the offence. It is also important to note that he was not the one who stabbed the deceased which act was committed by one of his accomplices.
 13. Under section 205 of the *Penal Code*, a person convicted of Manslaughter is liable to imprisonment for life. The court has the discretion to impose a lesser sentence depending on the circumstances of each case.
 14. In the case of *Republic v Mutai* (Criminal Case E016 of 2023) [2025] KEHC 2649 (KLR) (6 March 2025) ten years in jail was given for manslaughter. I have considered the sentencing objectives in totality. Having considered the above factors, I am convinced that the appropriate sentence should be custodial. I find that a sentence of seven (7) years imprisonment is reasonable. However, this Court is cognizant of the fact that under Section 333(2) of the *Criminal Procedure Code*, the period served in remand pending trial should be taken into account.
 15. Consequently, the 4th Accused Person namely: Brian Kenani alias Kasilo alias Fazul is hereby sentenced to serve seven (7) years imprisonment to run from 17th January 2021 the date of his arrest. The accused having entered a Plea Agreement has a right of appeal against sentence only.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 26TH DAY OF MARCH 2025

D. KAVEDZA



JUDGE

In the presence of:

Ms. Chepseba for the 4th accused

Ms. Njoroge for the State

Tonny Court Assistant

