



**Republic v Ali (Criminal Case E002 of 2024) [2024] KEHC 7701 (KLR) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7701 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUSIA  
CRIMINAL CASE E002 OF 2024  
WM MUSYOKA, J  
JUNE 28, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTION**

**AND**

**VISOO ALI ..... ACCUSED**

**RULING**

1. The accused, Visoo Ali, was initially charged with murder, contrary to section 203, as read with section 204, of the *Penal Code*, Cap 63, Laws of Kenya, with respect to the death of Thomas Jamal, on 21<sup>st</sup> February 2024.
2. The charge was later reduced to manslaughter, contrary to section 202, as read with section 205, of the *Penal Code*, after a plea bargain.
3. The background was that the deceased had attacked the accused on 2 occasions. The first was on 27<sup>th</sup> January 2024, at a disco matanga, whereupon the accused got frightened, and fled from the scene. The second was on 3<sup>rd</sup> February 2024, at a field where the accused had taken cattle, belonging to his employer, for grazing. The deceased came there, and attacked the accused. A struggle ensued, where the deceased pushed the accused to the ground, and grabbed him by the neck. The accused got agitated, and hit the deceased on the stomach with his elbow, the deceased fell down and began vomiting. He died thereafter.
4. In mitigation, it was said, by his Advocate, Mr. Ouma, that the accused had no previous criminal record, and that he was remorseful. He was said to be 20 years old. He said that the deceased attacked the accused twice, and, in the second attack, he, the accused, acted in self-defence. He said the accused did not intend to kill anyone, and that he was sorry.
5. The Republic, through Ms. Chepkonga, stated that the accused was a first offender. It was submitted that, although the deceased was the aggressor, a life was lost, and the accused ought to have used little force.



6. I called for a pre-sentence report, and one was filed, dated 3<sup>rd</sup> June 2024. It is indicated that the accused regretted the death, as he had no intention of harming anyone, and that the deceased was in the process of strangling him. The family described the accused as hardworking and obedient. Probation is recommended.
7. I have considered the mitigation, and the pre-sentence report. The deceased was the aggressor, according to the material on record. He attacked the accused twice. At the first instance, the accused fled. At the second, the accused was cornered, and was being strangled, when he hit out, no doubt, in self-defence, with fatal consequences.
8. It is regrettable, that a life was lost, but the situation that led to the death was created by the deceased himself. He sought out the accused, at his place of work, where he was busy going about his duties, in building the nation, and attacked him, and the accused only fought back. In the chaos of a struggle, of the kind described herein, it cannot be said that the person attacked has much choice, when felled to the ground, and is being strangled, to decide which part of the body of his assailant he should hit in self-defence. The deceased was the author of his own misfortune.
9. Taking everything into account, I hereby sentence the accused, Visoo Ali, to the period that he has spent in custody since his arrest, with the result that he shall be set free forthwith, unless he is otherwise lawfully held.
10. I have been guided by the following authorities: *Joshua Muthui Beth v Republic* [2013] eKLR (Nambuye, Mwera & Ouko, JJA), *Republic v Christopher Kiplangat Misik & another* [2018] eKLR (M. Ngugi, J), *FAO v Republic* [2019] eKLR (Aburili, J) and *Republic v Peter Kyalo Kaluma* [2020] eKLR (Ong’udi, J).

**DELIVERED, DATED AND SIGNED IN OPEN COURT AT BUSIA ON THIS 28<sup>TH</sup> DAY OF JUNE 2024.**

**W MUSYOKA**

**JUDGE**

Mr. Arthur Etyang, Court Assistant.

Advocates

Mr. Ouma, Advocate for the accused person.

Ms. Chepkonga, instructed by the Director of Public Prosecutions, for the Republic.

