

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARSEN

CRIMINAL CASE NO. 4 OF 2017

REPUBLICPROSECUTOR

VERSUS

JAMES KAMAU TAMA ACCUSED

CORAM: Hon. Justice Reuben Nyakundi

Mr. Mwangi for the State

Accused in person

SENTENCE – VERDICT

In following a plea-bargaining agreement the convict **James Kamau Tama** was indicted with the offence of manslaughter contrary to Section 202 (1) as punishable under Section 205 of the Penal Code. The details of the circumstances surrounding the unlawful conduct and subsequent death of the deceased are combined in the plea-bargaining agreement.

To that extent possible manslaughter offence is punishable with a maximum sentence of life imprisonment, which must be read consistently with the general principles of sentencing expressed in **Francis Muruatetu v R {2017} eKLR**. In addition the principles found in the sentencing policy guidelines of the judiciary 2016.

In this case, I have evaluated the contextual factors in light of the particular circumstances of the convict before Court. Again its to be remembered that the convict is a first offender who also told the Court that he is remorseful and regrets the incident. As set out in the plea-bargaining agreement, the first factor is the gravity of the offence where the life of another human being was lost. An analysis of the gravity of the offence involved use of a dangerous weapon namely a sword to inflict fatal injuries. Further, immediately, after the assault, the deceased took flight from the scene and the accused cared less as to his well being. The body of the deceased was to be discovered later while in the process of decomposition. The character of the convict after committing the offence portrays him as a senseless and emotionless person in so far as his criminal conduct is concerned.

There was no evidence by the convict being in an extreme a psychological distress to take away the deceased. Second, no excuse or provocation that triggered the fatal injury. Therefore, mitigating factors weighed against aggravating factors carry no balancing scale to impact on the decision of a lesser sentence. I am convinced that a custodian sentence in this matter would be most appropriate to serve the interest of justice and as a deterrence measure for the culpability of the convict. As a consequence, I impose a sentence of ten (10) years imprisonment.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 29TH DAY OF OCTOBER 2021

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R. NYAKUNDI

JUDGE

In the presence of:

1. MR. MWANGI FOR THE STATE

2. THE ACCUSED PERSON