

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.448 OF 2017

MOHAMED UME ADO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Mohamed Ume Ado was convicted of the offence of **manslaughter** contrary to **Section 202** as read with **Section 205** of the **Penal Code**. He was sentenced to serve six (6) years imprisonment on 29th September 2016 by R.A. Lagat – Korir J. In her sentencing notes, the Learned Judge had this to say:

“I have considered the mitigation. I have also considered the circumstances of the offence. The accused and deceased were leaving together as a young couple. I take it from the evidence tendered in the trial, that they were lovers. On the fateful day, they fought in the corridor of the lodge and continued their fight in the room. I did not find any aggravating circumstances. I have also considered that the accused have been custody for close to four years now. While loss of life is not to be taken lightly, I do not consider a lengthy custodial sentence appropriate in the circumstances of this case. The accused shall serve six years imprisonment.”

The Applicant has filed the present application seeking to have the court take into account the period that he was in remand custody prior to his conviction. He reiterated the same prayer in the oral submission that he made before the court. This court ordered for a probation report to be prepared before the hearing of the application. The probation report clearly indicates that the deceased’s family has not been reconciled with the fact that they lost their daughter. The Applicant’s family has made no effort to make peace with the deceased’s family. The Applicant’s complaint to the effect that the trial Judge did not take into account the period that he was in remand custody before sentencing him is not the correct position. From the above quote, it is clear that the trial Judge did in fact take into consideration that period of pre-conviction custody.

It is doubtful whether this court has jurisdiction to review a sentence of a court of concurrent jurisdiction. Nevertheless, in the circumstance of this case, even on its merit, the custodial sentence meted on the Applicant fitted the crime. The application for review of sentence lacks merit and is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 26TH DAY OF FEBRUARY 2019

L. KIMARU

JUDGE