



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CRIMINAL CASE NO. 4 OF 2018**

**(CORAM: R. E. ABURILI - J.)**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**SAMUEL JUSTO LEMIKOKI.....ACCUSED**

**SENTENCE**

***For Murder reduced to Manslaughter***

1. The Accused person herein **Samuel Justo Lemikoki** was convicted of the offence of **Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code** on 25.3.2019.

2. The Court, after hearing his mitigations and further mitigations by the accused person's advocate Mr. Korongo, ordered for a victim impact statement which statements have now been filed by the Directorate of Criminal Investigations Bondo Sub County on 10.6.2019. The family of the deceased Dalmis Owino Oidho represented by Lorna Achieng, his sister and Maurice Odhiambo Nyawara the cousin as well as Gordon Onyango Oidho his younger brother were interviewed by the D.C.I.O. Bondo Division and their opinion as gathered is herein filed in Court. The family of the deceased is forgiving of the accused for the offence committed, despite losing their beloved brother through unlawful killing by the accused person.

3. The accused person in his mitigation pleaded for leniency. He is a Tanzanian National. He stated that he did not intentionally kill the deceased and that he has been in prison since his arrest in 2018. He is aged 23 years old. In his further mitigation, he urged the Court to consider his young age and his innocence. He stated that he will not repeat such an offence. He also urged the Court to consider the option of fining him and or compensation to the deceased's family since as a non-citizen, he cannot be given non-custodial sentence.

4. I have considered the victim's impact statements as recorded by the D.C.I.O. Bondo, the mitigation by the accused person, the fact that he is a first offender and a non-citizen. I have also considered the circumstances under which the offence was committed. A life was lost through recklessness.

5. The accused had however no grudge with the deceased. He did not, from the evidence adduced, know the deceased. He was only executing his duties as a caretaker by directing those perceived to be trespassers at the beach to leave the premises when he unlawfully killed the deceased. He used excessive force. The weapon used and which inflicted injuries on the deceased, leading to his demise was blunt. A "rungu" (club).

6. The law provides that the Court, upon conviction of an accused person for the offence of Manslaughter, may sentence him to serve up to a maximum of life imprisonment see **Section 205 of the Penal Code**. Under **Section 24 of the Penal Code**, the Court is vested with jurisdiction to mete out the following punishments: death, imprisonment, Community Service Order, detention, fine, forfeiture, payment of compensation, finding security to keep the peace and be of good behavior, and any other punishment provided by the Code or by any other Act.

7. Under **Section 26(2) of the Penal Code**, a person liable to imprisonment for an offence may be sentenced to pay a fine in addition to or in substitution for imprisonment provided that where the law concerned provides for a minimum sentence of imprisonment, a fine shall not be substituted for imprisonment.

8. In this case, there is no minimum sentence provided for in law hence a fine can be imposed in substitution for or in addition to imprisonment.

9. Section **28 of the Penal Code** Provides guidance on where fines are imposed and material is that such fine shall not be excessive especially where the amount of fine is unlimited.

10. Having taken into account all the above factors and the fact that sentencing is in the discretion of the Court, having regard to the circumstances of this case and mitigations by the accused person, I exercise my judicial discretion and sentence the accused person to a prison term of one year and seven months to be calculated from the date when he was first arrested on 5.1.2018.

11. In addition, the accused person shall pay into Court a fine of KShs.75,000/= Seventy Five Thousand Kenya Shillings only and in default, he shall serve 18 months imprisonment.

12. As the accused person was not charged before the Lower Court with the offence of being in Kenya illegally, I shall not make orders for his repatriation after completion of his sentence, should he fail to pay the fine.

13. Orders accordingly.

**Dated, Signed and Delivered at Siaya this 25<sup>th</sup> day of June, 2019**

**R. E. ABURILI**

**JUDGE**

Delivered in the Presence of:

Mr. Okachi the Senior Principal Prosecution Counsel for the State

Mr. Ochanyo holding brief for Mr. Korongo Advocate for the Accused present.

Court Assistants: Brenda and Modesta