

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CRIMINAL CASE NO. 34 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

SAMWEL MBOYA CONGO alias TOM.....ACCUSED

SENTENCE

1. The accused person herein, **Samwel Mboya Congo alias Tom**, was charged with the murder of his friend **Andrew Dennis Young Ogada** (hereinafter referred to as '**the deceased**'). Following a trial, the accused person was found guilty and convicted of the offence of Manslaughter.
2. This Court received the accused person's mitigations as well as a Pre-Sentence Report which was filed on 14/11/2018. I have carefully considered the contents of the Report alongside the mitigations and the Prosecution's submissions. The Report captures the home environment as conducive for a non-custodial sentence. The accused person likewise prayed for such a sentence in his mitigations.
3. This Court is alive to the circumstances of this case. It was the deceased who attacked the accused person first on the road and later at his house. This Court found the accused person guilty of the use of excessive force that was fatal to the deceased.
4. I have taken into account the circumstances of the case and the mitigations tendered as well as the recommendations in the Report. On balancing the interests of both sides, I find that the accused person is not suitable for a non-custodial sentence., at least for now. There is need for the family of the accused person to forge a reconciliation with the family of the deceased more so given that they are neighbours. The accused person is hence sentenced to 5 years' imprisonment.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 23rd day of November 2018.

A. C. MRIMA

JUDGE