



**Republic v Olumayo (Criminal Case 2 of 2019)  
[2024] KEHC 12965 (KLR) (17 October 2024) (Sentence)**

Neutral citation: [2024] KEHC 12965 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE 2 OF 2019  
SC CHIRCHIR, J  
OCTOBER 17, 2024**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**TOM MAERE OLUMAYO ..... ACCUSED**

**SENTENCE**

1. The Accused herein was convicted of Manslaughter contrary to section 202 as read with Section 205 of the [Penal Code](#).
2. In mitigation, his Advocate told the court that the Accused is remorseful; that he regrets his actions and he is his family’s sole provider. He prayed for leniency and urged the court to give him a non-custodial sentence. He further states that he has had a chance to reform while in remand, and urges the court to now release him to society.
3. The prosecutor did not make any submissions.
4. The court sought for a social inquiry report from the Director probation and Aftercare services.
5. There are conflicting reports about the character and standing of the accused within the society, but the observation that he is troublesome and temperamental is more pronounced.
6. I have considered submissions and the findings of the probation officer.
7. Remorse is a mitigating factor. There was also no indication that the accused is a repeat offender, and therefore I will treat him as a first offender. Being a first offender is also a mitigating factor.
8. I have considered the age of the accused, which is placed at 55 years, by the probation officer. I take Judicial notice of the fact that as a matter of common notoriety, the life expectancy in Kenya as at year



2024 is at 68 years. I therefore take into consideration, the need for the accused to have a chance to get out of prison at some point, and perhaps spend the remaining years of his life with his family.

9. On the aggravating side, the probation officer's finding of an uncontrolled temper on the part of the accused is lend credence by the circumstances of the offence. From the evidence on record, it emerged the killing was caused by an altercation between the deceased and the accused, and in anger the Accused stabbed the deceased. Anger that can lead one to caused fatal injury to another person depicts a case of unbridled anger. It is the kind of anger that poses danger to those around him.
10. A time spend in jail would give the accused a time of introspection on the consequences of an untamed anger.
11. Further ,although the circumstances of the offence, established that the Accused was defending himself, the use of 2 jembes to cut his brother was clearly excessive. That kind of force was not necessary.
12. Finally, I take into consideration the fact that the purpose of punishment is restitution, a form of compensation to the victims of crime, in this case the family of the victim, and also the society for the harm caused by the Accused's crime.
13. In view of all the foregoing, I hereby sentence the Accused to 15 years in prison effective from 14/1/2019 being the date when he was first arraigned in court.

**DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 17<sup>TH</sup> DAY OF OCTOBER, 2024.**

**S. CHIRCHIR**

**JUDGE**

In presence of:-

Godwin Luyundi- Court Assistant.

Ms. Osoro for the state

The Accused

Ms Anguka for the Accused.

