

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL CASE NO. 3 OF 2019

REPUBLIC.....PROSECUTION

VERSUS

DENNIS LANGAT.....1ST ACCUSED

KENNEDY OKULI.....2ND ACCUSED

SENTENCE

1. The court has considered the Judgement written by **Kariuki J** and the mitigation made by Mr. Onono counsel on record for the 1st and 2nd accused and the additional mitigation made by Mr. Kairu on behalf of the 2nd accused more particularly reference made to paragraph No. 7 – 19 of the Judiciary Guidelines on Sentencing.

2. The statute that remains applicable in our jurisdiction and prescribes for the sentence to be meted out in relation to the offence of manslaughter, which the accused persons were convicted of is the Penal Code and in particular Section 205 thereof which provides

“(205) Punishment of manslaughter

Any person who commits the felony of manslaughter is liable to imprisonment for life.”

3. The above section of the law allows the court to use discretion to the maximum limit of life imprisonment. No option for non-custodial sentence is prescribed.

4. Counsel Mr. Kairu relied heavily on the Sentencing Policy Guidelines on seeking for a non-custodial sentence for his client. It is clear that the said guidelines remain to be “*guidelines*” and cannot be a substitute for the written law.

5. Further paragraph 3.1 of the said guidelines also states as follows;

“Proportionality; The sentence meted out must be proportionate to the offending behavior. The punishment must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behavior is weighed in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender.”

6. Having considered the circumstances of the case, the mitigating factors submitted by counsel at length on behalf of the accused persons it is noteworthy that the harm caused by the offence resulting in the death of the deceased is immeasurable to the family of the deceased and the society generally. The action of the accused persons caused a major loss, death. This must be weighed against other relevant factors that the court takes into account.

7. Weighing all relevant factors this court sentences both the accused person to a jail term of 10 years.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 4th DAY OF NOVEMBER, 2021.

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ALI-ARONI

JUDGE