



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.257 OF 2012**

*(An Appeal arising out of the conviction and sentence of E. MAINA - CM delivered on 29<sup>th</sup> June 2012 in Nairobi CM. CR. Case No.1599 of 2011)*

**SAMUEL GITAU KAMAU.....**

.....**APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant, Samuel Gitau Kamau was charged with two (2) counts of **conspiracy to murder** contrary to **Section 224** of the **Penal Code**. The particulars of the offence were that on the night of 18<sup>th</sup> November 2011 at 7.45 p.m. at Githurai 44 area in Nairobi County, the Appellant jointly with others not before court, conspired to unlawfully cause the death of Anthony Kinyua Muthoni and Nelly Wangui Mwaura. When the Appellant was arraigned before the trial magistrate's court, he pleaded not guilty to the charge. After full trial, he was convicted as charged and sentenced to serve five (5) years imprisonment on each count. The sentences were ordered to run concurrently.

Although the Appellant filed an appeal challenging his conviction and sentence, on the date of the hearing of the appeal, he withdrew the appeal on conviction. However, he pleaded with the court to exercise leniency on him by reducing the sentence that was imposed on him. It was his testimony that in the period that he had been in prison, he had reformed, had acquired several skills which will enable him to be a useful member of society. He had also been trained on counselling and homecare of HIV/Aids patients. He had become a born again Christian and undertaken courses on Bible Study. He told the court that he had reformed and would become a law abiding citizen if released. The officer in-charge of the Prison where the Appellant is currently serving the sentence wrote to the court vouching for the Appellant as a model prisoner. On its part, the State was opposed to the plea by the Appellant for reduction of sentence. Ms. Njuguna for the State submitted that the Appellant's sentence of five (5) years imprisonment fitted the crime considering the fact that the maximum sentence that could have been imposed in the circumstances was fourteen (14) years. She was of the view that the offence for which the Appellant was convicted was serious and deserved the sentence that was imposed. She urged the court to disallow the appeal.

This court has carefully re-evaluated the facts of this case. That the Appellant was sentenced to serve a lawful sentence is not in doubt. The Appellant failed to establish that the sentence that was imposed on him by the trial court was manifestly harsh or excessive or was illegal. This court has however been persuaded that in the period that the Appellant has been in prison he has learnt his lesson. He has become a model prisoner. He has learnt the value of caring for the less fortunate members of the society. He has become a Christian. This court is persuaded that he has reformed and is ready to be integrated back to the society.

In the premises therefore, this court will allow the Appellant's appeal on sentence. The custodial sentences that were imposed on the Appellant by the trial court are hereby commuted to the period served. The Appellant is ordered set at liberty forthwith and released from prison unless otherwise

lawfully held. It is so ordered.

**DATED AT NAIROBI THIS 10<sup>TH</sup> DAY OF MARCH 2015**

**L. KIMARU**

**JUDGE**