



REPUBLIC OF KENYA



KENYA LAW
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**Republic v ML (Criminal Case E016 of 2021)
[2023] KEHC 17876 (KLR) (31 May 2023) (Sentence)**

Neutral citation: [2023] KEHC 17876 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL CASE E016 OF 2021**

**JK SERGON, J
MAY 31, 2023**

BETWEEN

REPUBLIC PROSECUTOR

AND

ML ACCUSED

SENTENCE

1. The Accused Person herein namely:- ML was on 30th March convicted for the offence of Murder.
2. Mr. Kakoi, learned State Counsel urged this court to treat the accused as a first offender since he did not have the accused's past criminal record.
3. The Accused was invited to make submissions on mitigation. Miss Maryanne Kariuki learned advocate for the accused filed written submissions in mitigation. This court also called for a probation pre-sentence report.
4. Miss Kariuki indicated that the Accused was arrested while under the tender age of 14 years hence he was not aware of the legal or factual consequences of his actions.
5. The learned advocate further stated that the Accused is a child refugee who fled civil war in Southern Sudan therefore he is in need of protection and guidance as a minor under the *Children Act* No 29 of 2022. The accused is unable to trace his family whom he left in Southern Sudan. It is said that the Accused is remorseful and that he had no malice aforethought.
6. This court was beseeched to be lenient to the Accused. I have also considered the probation pre-sentence report. In the aforesaid report it is indicated that the Accused is a youthful offender aged 18 years residing with his younger brother aged 17 years at Kakuma Refugee camp. It is pointed out that the Accused recently completed class 8 while in custody at Kakuma GK Prison.



7. The report indicates that the deceased was the Accused's Uncle and that his family also serves as the victim's family. It is also indicated that the family is ready to forgive the Accused and are willing to accept him back home so that he can continue with his education.
8. I have considered the mitigating factors and the fact that the Accused is a first offender. I have also taken into account the fact that the Accused is a youthful offender hence he should be dealt with under the section 239 (1) (g) of the *Children Act* No 29 of 2022. This court also takes note of the fact that the Accused has been in custody for 1 ½ years. I formed the opinion that the Accused should be dealt with under section 239(1)(g) of the *Children's Act* No 29 of 2022. However, the Accused has now reached the age of majority hence that Provision may not be applicable.
9. Having considered the mitigating factors in its totality, I find that a short custodial sentence is appropriate.
10. The Accused namely; ML is hereby sentenced to serve 2 years imprisonment.

DATED SIGNED AND DELIVERED VIRTUALLY THIS 31ST DAY OF MAY, 2023.

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J.K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

Prosecutor - Kakoi

Accused – Present in Prison

