

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCRA NO. 99 OF 2019

ISAAC MUTIE NTHENGEAPPELLANT

-VERSUS-

REPUBLIC RESPONDENT

RULING

1. On the 10th December 2020, this court delivered its judgment on the appeal herein, written dated and signed on 2nd December 2020 by H. I. Ong’udi J.

2. In the said judgment, this court set aside the sentence imposed by the trial court and issued directions on sentencing as follows -

“The upshot is that the appeal partially succeeds. The conviction is upheld and the sentence of ten (10) years is set aside. I hereby call for a pre-sentencing report by the Makueni County Probation Officer. The Appellant to report to the Probation Officer today. The report to be filed within 30 days. The Appellant remains in the earlier bond terms until then.”

3. Consequently, upon the issuance of the above court orders, a pre-sentencing report dated 18th January 2021 signed by S.M Munyasya – Probation Officer Makueni was filed. In the said report it was noted that both the victim and Appellant were children in need of care and protection as at the time of the offence, due to bad parenting, and concluded as follows –

“... in view of the findings, the Appellant may be considered for non-custodial sentence where the office may assist him pursue his beauty therapy course to the completion while under supervision” This is however subject to other considerations by the Honourable court.”

4. I have taken into account that according to the above pre-sentencing report, the victim suffered no negative effect from the incident. In addition, the Appellant is now an adult who is married with one child and is the bread winner of his family. The Appellant has also been on bond during the pendency of the appeal, and the Probation Department has undertaken to assist him pursue studies if granted non-custodial sentence.

5. Taking into account the above factors, I sentence the Appellant to be on Probation for three (3) years from today, under the oversight of the Probation Officer Makueni County.

DATED SIGNED & DELIVERED, THIS 24TH DAY OF MARCH 2021, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE