



**REPUBLIC OF KENYA**

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

**HCCRC NO. 7 OF 2018**

**REPUBLIC.....PROSECUTION**

**VERSUS**

**JMN.....ACCUSED**

**RULING ON SENTENCE**

1. The accused herein was initially charged with murder but was convicted by this court of the lesser offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.
2. The maximum sentence for the offence of manslaughter under section 205 of the Penal Code is life imprisonment and the accused person is a minor aged 16 years as at the time of conviction.
3. Before considering the appropriate sentence to pronounce this court received and considered a pre-sentence report prepared and signed by Mr. S.M Munyasia Probation Officer Makueni dated 15/3/2021, in which the Probation Officer recommended non-custodial probation sentence.
4. It is obvious that the accused is a child within the meaning of the Children Act No. 8 of 2001 as he is below 18 years of age, being 16 years old. In this regard, Section 191 of the Children Act has special provisions on how to deal with such children conflict with the law. Section 191(1)(c) provide for probation sentence in the following terms:-

***191(1) In spite of the provisions of any other law and subject to this Act, where a child is tried for an offence, and the court is satisfied as to his guilt, the court may deal with the case in one or more of the following ways –***

***(c) by making a probation order against the offender under the provisions of the Probation of Offenders Act;***

5. From the contents of the pre-sentence report, the two families of the victim and of the offender have attempted to reconcile through payment of traditional compensation, which discussions have not been finalized. I note that in the mitigation, the defence has emphasized that the accused is entitled to a sentence that takes into account his best interests as he is still a child. This in my view is a constitutional imperative under Article 53(2) of the Constitution.
6. According to the pre-sentence report, the accused hit the deceased to revenge, the deceased having reported him for bad conduct in school, wherein the accused was punished by the teacher. The accused is a first offender but he must have used unnecessary force in revenging against the deceased.
7. Though the Probation suggestion is good for the benefit of the accused to pursue his education, one has to consider the wider picture as his family has not paid the compensation proposed. In this regard, section 191(1)(f) provides that a child offender can be sentenced as follows –

***(f) by ordering the offender to pay a fine, compensation or costs or any or all of them”***

8. In the circumstances of this case therefore, I order as follows:-

***(i) The accused will pay the victim’s family compensation in the sum of Kshs. 95,000/= within 30 days from today’s date, in default he will serve probation for 3 years. If in custody, he is hereby released.***

***(ii) I will hereafter fix a suitable mention date to confirm such payment.***

**Dated Signed & Delivered, this 22<sup>nd</sup> day of April 2021, in open court at Makueni.**

.....

**GEORGE DULU**

**JUDGE**