



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL CASE NO.33 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

DK.....ACCUSED

RULING ON SENTENCE

1. In this case, the subject herein DK has been convicted of manslaughter contrary to section 202 as read with section 205 of the Penal Code, after a plea bargain agreement.
2. Thereafter the Assistant Director of Public Prosecutions Mr. Ayodo informed the court that the convict is a first offender. Defence counsel Mr. Nyadimo on his part informed the court that the death was tragic and unfortunate and the accused was remorseful. He stated that the convict had shown willingness to go to school and was 14 years old and was from a humble background. Counsel urged this court to be guided by Article 53 of the Constitution and the Borstal Institution Act (Cap. 92) as well as the Children Act in sentencing the convict.
3. A pre-sentence report was later filed signed by Francis Ombayi Probation Officer Kericho. In the report was recorded that the convict was truant, had dropped out of school at class 4, had become a drug and alcohol user, and had got out of parental control.
4. Article 53 of the Constitution of Kenya 2010 provides as follows –
 - 53 (1) Every child has the right –**
 - (f) not to be detained, except as a measure of last resort, and when detained, to be held –**
 - i. for the shortest appropriate period of time, and**
 - ii. separate from adults and in conditions that take account of child's sex and age**
 - (2) A child's best interest are or paramount importance in every matter concerning the child.**
5. The above constitutional provisions thus provide for favourable treatment for children, even where they are in conflict with the law.
6. Section 190(1) of the Children Act No.8 of 2001 prohibits imposition of a prison sentence on any child. Section 191 of the Act on the other hand provides for methods of dealing with child offenders. Section 191 (1) (9) provides that –
 - (g) in the case of a child who has attained the age of sixteen years dealing with him, in accordance with any Act which provides for the establishment and regulation of borstal institutions.**
7. As the convict has attained the age of 16 years, his counsel has urged this court to commit him to a borstal institution. Section 6 (1) of the Borstal Institution Act (Cap.92) counters on this court powers to commit a youthful offender to a borstal institution for three years to undergo training.
8. Though there are other methods under section 191 of the Children Act of dealing with a child offender above 16 years, since the pre-sentence report records that he has become a person of character in the family and community, this court cannot accord him a non-custodial punishment. I thus have no choice but to commit him to a borstal institution as provided for by statute law.

9. I note that section 8 of the Borstal Institution Act provides as follows –

8. Before directing that a youthful offender be sent to a borstal institution, the court shall ascertain whether accommodation is available in a borstal institution for the youthful offender, and shall so direct unless it has found that accommodation is so available.

10. Consequently, I order the officer in charge of GK Prison Kericho to confirm to this court that there is accommodation for the convict herein in a borstal institution within fourteen (14) days from today.

Dated and delivered at Kericho this 12th March 2020.

GEORGE DULU

JUDGE