



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

CRIMINAL CASE NO. 96 OF 2017

FOMERLY MACHAKOS HCCRC NO.16 OF 2014

REPUBLIC PROSECUTION

-VERSUS-

CMK ACCUSED

RULING ON SENTENCE

1. CMK the accused herein was charged and convicted of the offence of murder contrary to section 204 of the Penal Code.
2. The prosecution confirmed that he was a first offender. In mitigation Mr. Kioko holding brief for Mr. Makau Mutua submitted that the accused was remorseful and had been in custody since 2014. He also stated that the accused's wife had become affected mentally and the couple's children were being taken care of by the accused's elderly mother.
3. This Court called for a presentencing report which was filed by the County Probation Officer Mr. Munyasia on 15th December, 2020.
4. The Officer interviewed persons from both accused's and deceased's families and filed a very detailed report. It shows that the accused has five (5) children, who are in form 2, classes 7, 6 and 5. The eldest dropped out of school in form 2 and got married. The report shows that the accused's wife has developed mental problems and virtually does nothing substantive for the children.

The accused's mother and his siblings are the ones supporting his children.
5. The report further confirms that the two families i.e. (deceased's and accused's) have began the reconciliation process. They expect to complete the process in May 2021.
6. I have considered the circumstances under which this offence was committed. The deceased was just stabbed once by the accused person and the stab was fatal. I have also considered the accused's mitigation and the presentencing report. In particular, I have taken into account the following:
 - The accused's age (43 years).
 - The period he has been in remand custody from 14th February, 2014 (6 years + 10 months).
 - The current condition of his wife and the fate of his children who are minors.
 - The reconciliation in progress between the two families.
 - The presentencing report which is favourable.
7. In view of all the above, I find the accused suitable for a non-custodial sentence. I hereby place him on probation for three (3) years under the supervision of the County Probation Officer.
8. The conditions of probation are explained to the accused.

Delivered, signed & dated in open court this 18th day of December 2020, at Makueni.

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H. I. ONG'UDI

JUDGE