

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL CASE NO. 10 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

DMM.....SUBJECT

JUDGMENT

1. In a judgment dated 18/10/2018, I convicted DMM (“Subject”) of the offence of manslaughter contrary to section 202 as read together with section 205 of the Penal Code. The Subject had originally been charged with the murder of DN. However, after a fully-fledged trial, I concluded that the element of malice aforethought was missing and hence the murder charge could not be sustained.

2. The circumstances in which the offence was committed are contained in the judgment. In short, the Deceased challenged the Subject to a duel. Both were minors – about sixteen years old. The Subject accepted the challenge. With their friends watching, they engaged in a physical fight during which the Subject seemed to have been on the losing end of it. To tip the scales in his favour, the Subject picked up a piece of wood and hit the Deceased. The Deceased immediately fell to the ground. The Subject panicked. He immediately started giving the Deceased first aid; ran to their house to get some milk in the hope it would help; and was otherwise desolate. It was not supposed to be this serious; it was not supposed to lead to this tragedy. But it did. The Deceased was taken to the hospital but he never made it. He was gone by the following day.

3. After a full trial, the Court was persuaded that the killing was without pre-meditation and convicted the Subject of manslaughter.

4. In mitigation, the Subject pleaded with the Court for leniency. He told the Court that he has learnt his lesson in the two or so years he has been in remand. He said he has learnt how to solve conflicts without resorting to violence. He hoped the Court will give him a second chance by sentencing him to non-custodial sentence so that he can continue schooling. He regretted his actions and promised that he will not repeat them again. In the future, he said, he will simply walk away from such puerile challenges to duel.

5. The Subject’s counsel, Ms. Morande, reiterated that the Subject was remorseful; that he was a minor who should be put on non-custodial sentence so that he can complete his studies.

6. The Subject’s mother, Ms. MW, also addressed the Court and pleaded for forgiveness on his son’s behalf. She said that the Deceased was a good friend to the whole family and they were all devastated by the death. She pleaded with the Court to give her son a second chance in life.

7. I requested for a Pre-bail Report and one was filed. The Report states that the Subject has genuine remorse for what happened and begs for forgiveness. The Report is highly favourable and recommends that the Court considers putting the Subject on probation.

8. Looking at the circumstances of the case, I am persuaded that this is the correct recommendation. This was a tragic occurrence in which two friends who were minors engaged in a childish tragic fight which resulted in the unplanned death of one of them. I am persuaded that no useful purpose will be served by sentencing the Subject to a custodial sentence. The law counsels that children should only be put in prison as a last resort. There are no indications that custodial sentence is the best or only option in this case. The opposite is true. Consequently, I sentence the Subject to a sentence of two years probation.

9. Orders accordingly.

Dated and delivered at Nakuru this 29th day of January, 2019

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JOEL NGUGI

JUDGE