



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

CRIMINAL CASE NO 10 OF 2016

REPUBLIC..... PROSECUTOR

VERSUS

KOMORA BONAYA.....ACCUSED

RULING ON SENTENCE

1. Komora Bonaya was charged with the offence of murder contrary to **section 203** as ready with **section 204 of the Penal Code**. The particulars of the offence were that on the 25th day of February, 2016 at Ngao village in Tana sub- county within Tana River County murdered Wiston Kamurata. The accused took plea on 13/5/2016 and denied the charge. Age assessment was done which showed that the accused had just turned 18 years as at the date of plea.
2. The trial started before Hon. A. Ongeri (J) on 24/6/2016 and the court heard a total of 7 witnesses. While the trial was on going the parties requested the court to stay the trial to enable them plea bargain. I took over the matter when plea negotiations were on going. The parties finally filed a plea agreement on 25/10/2018 and the prosecution filed a new information reducing the charge of murder to one of manslaughter contrary to section 202 as read with section 205 of the Penal Code.
3. The court accepted the plea agreement after satisfying itself that the accused understood the process and entered into the plea agreement voluntarily. The accused then pleaded guilty to substituted charge of manslaughter.
4. The facts of the case as read by the prosecution counsel are that on 25/2/2016 around 9:30pm, the accused Bonaya Komora fought with the deceased. The two had traded insults and the accused stabbed the deceased in the course of the fight. The accused was arrested and charged. The post-mortem report (exhibit 1) showed that the deceased sustained a stab wound on the left anterior chest wall and a cut on the left forearm. The cause of death was severe haemorrhage due to stab injury to the left arm and heart.
5. The accused accepted the facts as read by the prosecution and was convicted on his own plea of guilty.
6. In mitigation Miss Atieno for the accused submitted that the accused was a minor at the time of commission of the offence and had been remanded in the children's remand home. She submitted that he was remorseful and had been counseled and reformed. The accused added that his father died while he was young and prayed for leniency.
7. The accused's mother was given audience by the court. She told the court that the families of the deceased and the accused were part of the same extended family and had reconciled. She asked that the accused be forgiven by the court. The state on its part only drew the attention of the court to the probation officer's report.
8. The probation report dated 24/10/2018 gives extensive background information on the circumstances of the offence and the accused. It states that the families have reconciled and are willing to accept the accused back to the community. It recommends a non-custodial sentence.
9. I have paid due regard to the purposes of sentencing as set out in the Judiciary sentencing Guidelines. I have considered the mitigation of the accused as well as his age which is stated to be between 18-20 years. More importantly, I have considered that the victims of the offence, being the family of the deceased were willing to forgive the accused and reconcile. I am of the firm persuasion that a custodial sentence would not be appropriate in the circumstances of this case.
10. Having taken all factors into consideration, I am persuaded that a non-custodial sentence is appropriate. The accused is sentenced to serve 3 years probation. He shall enroll either in a school or an institution that offers vocational or skills training within 3 months of today. Evidence of enrolment shall be provided to the probation officer. Further, the accused shall maintain a high level of discipline in the institution of learning that he shall join. Failure to adhere to the probation terms shall lead to reversal of the non-custodial sentence.

Orders accordingly.

Sentence delivered in open court at Garsen on 27th day of February, 2019.

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R.LAGAT KORIR

JUDGE

The presence of

The Accused

Pacho Court Assistant

Mr. Kasyoka For prosecution

N/A Ms Atieno for the accused