

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

CRIMINAL CASE NO. 15 OF 2018

REPUBLICPROSECUTOR

-VERSUS-

PASCAL BOKOBORA NYAHORE.....ACCUSED

SENTENCE

1. The Accused person herein was formally charged with the information of murder and after a trial he was found guilty and convicted of the offence of manslaughter on 16/05/2019. On 29/05/2019 parties tendered submissions and mitigations on sentence where the Defence Counsel relied on the Pre-Sentence Report and urged this Court to consider the fact that the accused person is still a student and a first offender so that his education is not interrupted.

2. The prosecution urged the Court to note that an innocent life was lost and although the accused person is a first offender he is liable to life imprisonment.

3. I have considered this matter carefully. The circumstances under which the accused person committed the offence were well captured in the judgment. As stated therein the accused person in the company of another who is still at large confronted the deceased who was in company of his friend at the home of the deceased and fatally wounded him. I agree with the proposal in the Pre-Sentence Report that the accused person may have been out to relieve the deceased of his properties instead. However, that was taken care of in the judgment. I have also taken into account the Pre-Sentence Report on record and its recommendation that the accused person is suitable for a non-custodial sentence so as to accord him an opportunity to complete his tertiary education. The Report also noted that the family of the deceased is yet to come to terms with the death of the deceased, but came short of stating the family's position on sentencing.

4. I fully agree that the accused person ought to be aided to pursue his life prospects given that he was in a tertiary institution. For that to happen there must be a peaceful co-existence between the accused person and his family on one hand and the family of the deceased on the other hand given that both families are from the same clan. I am of the considered view that the family of the accused person ought to have taken further steps to engage that of the deceased in view of the fact that family of the deceased is yet to come to terms with the death of the deceased. Short of that, releasing the accused person on a non-custodial sentence may put his life in danger.

5. I would have admitted the accused person into a non-custodial sentence had the foregone been undertaken. Given the prevailing state of affairs I am of the position that it is unsafe to release the accused person at this point in time. Reconciliatory efforts ought to be undertaken or the accused person do serves a custodial sentence in return. Having taken all relevant considerations into account I hereby sentence the accused person to 5 years' imprisonment. The accused person has the option of applying for review of the sentence once reconciliation is undertaken.

It is so ordered.

DELIVERED, DATED and SIGNED at MIGORI this 28th day of June 2019

A. C. MRIMA

JUDGE

Sentence delivered in open Court and in the presence of:

Mr. Mwita Kerario Counsel for the Accused person.

Mr. Kimanthi, Senior Principal Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the State.

Evelyne

Nyauke

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Court

Assistant