

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO.6 OF 2019

REPUBLIC.....PROSECUTION

VERSUS

RKK.....1ST ACCUSED

VKB.....2ND ACCUSED

SENTENCE

1. The two accused persons herein have been convicted of manslaughter contrary to section 202 as read with section 205 on their own plea after a plea bargaining agreement was filed reducing the intimal charge of murder to manslaughter.
2. After conviction the Assistant Director of Public Prosecutions, Mr. Ayodo informed the court that the State did not have a previous record, and that the two accused persons be treated as first offenders.
3. The defence counsel Ms Chepkurui on her part submitted in mitigation that the two accused persons were young men aged 16 years for R and 14 years for V respectively. Counsel submitted that the accused are thus children, and brothers in conflict with the Law and urged that they be treated as such, as V was a class 7 pupil and R class 8 – both at [particulars withheld] Primary School. Counsel said that the two had asked for forgiveness, and their father who was in court had held discussions with the family of the deceased and asked for forgiveness on their behalf.
4. Defence counsel also pleaded that the court takes into account the bright future of these two boys, who needed to go through school. Counsel urged the court to assist in making the subjects’ dreams a reality, and urged for a non-custodial sentence.
5. This court also received pre-sentence reports prepared by the County Probation Officer, Kericho. With regard to VKB, the report concludes by stating that he asked for forgiveness, families had reconciled, and the court should consider probation sentence. With regard to RKK, the pre-sentence report concludes by stating that he is 16 years old, remorseful, the two families have reconciled and that the court should consider a probation sentence.
6. I have considered the above. From the facts summarized by the prosecutor VB was annoyed that the deceased, a prefect who listed him for punishment as a vernacular speaker. They fought with the deceased, and were joined by his brother RK. Both brothers beat the deceased with fists and kicks till he became unconscious, and later died attending treatment in hospital.
7. Unfortunately, such behavior among young persons is becoming very common in Kenya these days. Such conduct has to be discouraged. If the accused were not young persons (children) as defined under the Children Act, I would certainly have put them in jail to send a strong message to future offenders.
8. I appreciate however, that the accused are children, first offenders, pleaded guilty and did not waste the court’s time, and no weapon was used.
9. Article 53 of the Constitution of Kenya 2010 and section 191 of the Children Act 2001 provides for special treatment for children in conflict of the law. It is required under the Constitution and the written law that courts and other institutions dealing with Children matters, consider the best interests of the children as paramount in pronouncing any punishment.
10. In the circumstances of this case, therefore, where this incident arose out of a foolish fight with no weapon used, I put each of the two accused herein on probation for two (2) years from today to be of good conduct, and in default they are liable to alternative sentence as applicable. The Children Officer or Probation Officer, Kericho County will be at liberty to visit the two convicts, within that period for two (2) years to ascertain if they have kept the good conduct requirement above and file a report in this court.

Dated and delivered at Kericho this 29th day of July 2019.

George Dulu

JUDGE