

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCRC NO. 33 OF 2017

REPUBLIC.....PROSECUTION

VERSUS

BENJAMIN KALULU KATUAACCUSED

RULING

1. The accused was initially charged with murder contrary to Section 203 as read with Section 204 of the Penal Code. It was later reduced to manslaughter after a plea bargain. The accused was convicted after admitting the charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
2. After mitigation, the court called for a pre-sentence report. This was on 21st May 2019. A report dated 28/5/2019, was filed on 30/5/2019 and it indicated that there was an issue being raised by the accused's younger brother which needed to be sorted out. The family therefore needed time to handle the issue.
3. On 6/6/2019, this court called for a further report in a month's time to enable the accused's family address his brother's issue. It was not until 23/7/2019 that the said report was filed. Prior to this on 18/7/2019, the accused's mother appeared before this court and confirmed that the family has bought for the accused alternative land for him to go and settle on. This is part of what needed to be sorted out in relation to the accused's younger brother.
4. The accused was first arraigned in court on 16/1/2014. He has therefore been in custody for 5 ½ years. He is a first offender and still single. I have considered the circumstances leading to the commission of this offence, his period of stay in custody, his marital status and his being a first offender. Also considered is his mitigation. I find that his stay away from his family has taught him a few lessons. The community and family have positive reports about him.
5. For that reason, I find a non-custodial sentence to be suitable for him in order for him to resettle himself.

Order

- i. Accused is discharged under Section 35(1) of the Penal Code on condition that he remains of good behavior for a period of 24 (twenty-four) months. This condition is clearly explained to the accused person.**

Orders accordingly.

DELIVERED, SIGNED & DATED THIS 25TH DAY OF JULY 2019, IN OPEN COURT AT MAKUENI.

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H. I. ONG'UDI

JUDGE