



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCR NO. 06 OF 2019

FORMERLY MACHAKOS HCRC. NO. 34 OF 2003

FORMERLY NAIROBI HCCRA NO. 314 OF 2012

REPUBLIC.....PROSECUTION

-VERSUS-

JMM.....ACCUSED

RULING ON SENTENCE

1. **JMM** was on 27th October 2006 convicted of the offence of murder contrary to section 203 as read with section 204 of the Penal Code by **Justice R. Wendoh**. He appealed against the judgment vide Court of Appeal Nairobi Criminal Appeal No. 314 of 2012. In its judgment dated 25th January 2019, the Court of Appeal referred the accused back to this court for sentencing rehearing.

2. When the matter came for the rehearing on sentencing, Mr. Hassan for the accused addressed the court on the accused's mitigation. He explained that the accused was arrested when he was aged 16 years of age in 2002 and has been in custody since then. He was convicted in 2006 he said.

3. He asked the court to consider the period he has been in custody. He expressed the accused person's remorse over what led to the deceased's death.

4. I have considered all that has been raised by the defence. I have read through the evidence on record and noted the circumstances under which this offence was committed. The accused and deceased had fought the previous day before the date of incident. He then went on a revenge mission.

5. I called for a copy of the accused's identity card which was availed by the prison authorities. This I.D card was taken while accused was in prison custody. The date of birth is shown as 3rd December 1985.

6. This offence was committed on 14th October, 2002. It means that at the time of commission of the offence the accused was sixteen (16) years and ten (10) months old hence a minor. He was in remand custody for four (4) years before the determination of this case. He has served 13 years of the sentence making a total of 17 years in prison custody.

7. This court called for a pre-sentence report which was filed on 24th October, 2019. The report is quite comprehensive. It's clear that there is no more enmity between the family of the deceased and the accused. They are even working on a formal reconciliation.

8. The accused went to prison a minor and is now an adult aged 34 years. I believe he will need some re-orientation and counselling to help him settle back into the family and community.

9. I therefore place him on probation for eighteen (18) months for that purpose under the supervision of the Makueni county probation officer. The conditions attached to probation are clearly explained to the accused.

Orders accordingly.

Delivered, Signed & Dated This 30th Day of October 2019, in Open Court at Makueni.

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H. I. Ong'udi

Judge