

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

HIGH COURT CRIMINAL CASE NO. 10 OF 2016

Lesiit, J.

REPUBLIC PROSECUTION

VERSUS

MOHAMMED ISSA JUMA ACCUSED

RULING ON SENTENCE

1. The accused was initially charged with murder contrary to **section 203** of the **Penal Code**. However, after a successful Plea Bargaining, the charge was reduced to manslaughter contrary to **section 202** of the **Penal Code**.
2. I have considered that the accused was convicted of the lesser charge of manslaughter contrary to **section 202** of the **Penal Code** after pleading guilty to the offence thus saving court's time.
3. I have considered that the Prosecution has treated the accused as a first offender.
4. Mr. Njuguna for the accused in mitigation urged the court to note that the accused is 20 years old and had just turned 18 years of age at the time he committed this offence. He urged that the accused has been in custody for 2 years and 1 month and that he has shown signs of rehabilitation and change.
5. Mr. Njuguna submitted that the accused was remorseful for the offence, was an orphan and has requested for a non-custodial sentence.
6. I called for a Pre-Sentence Report from Probation. One has been filed by Ms. Abima, Probation Officer. I have considered it. It shows that the accused has no blood family he knows having grown up as an orphan cared for by well-wishers. The well-wishers speak highly of him.
7. There is an impact statement by the mother of the deceased. She is still bitter for the loss of her first born son and is yet to heal from the shock of that loss.
8. I have considered submissions by the prosecution and the defence counsels. I have also considered the Pre-Sentence Report by the Probation.
9. From the circumstances of this offence, it is clear the accused reacted to aggressive behaviour of the deceased towards a female. Accused person's action was equally as aggressive as it was protective.
10. The fact that the accused was a security person at the place where this incident occurred, and the fact accused had behaved aggressively towards a woman, I find that the only conclusion I can make is that the accused was provoked by deceased's behaviour. The accused person's action was however excessive as the blow to the head had caused laceration.
11. The Probation Officer was non-committal on whether the accused was suitable for a Probation Sentence.
12. Having taken all these factors into consideration, I will sentence the accused to four years imprisonment less the two years and six months he has been in custody. In total he should serve 1½ years'

imprisonment.

DATED AT NAIROBI THIS 18TH DAY OF APRIL, 2018.

LESIIT, J

JUDGE