

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL CASE NO. 53 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

GALCHA DAE.....ACCUSED

RULING ON SENTENCE

The accused, Galcha Dae, was initially charged with murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of that charge showed that on the 20th April 2013 at Kiamaiko, Huruma area in Mathare Sub-County within Nairobi County he murdered Brian Kamau. The accused was taken to court on 27th November 2017 but the plea for murder was taken on 6th December 2017. He pleaded not guilty and the matter was listed for hearing on 2nd and 3rd of May 2018.

Before the date of the hearing and after the bail application argued by the accused through his counsel Mr. Njuguna was declined, the accused offered to the Office of the Public Prosecutions a plea bargain to a lesser charge of manslaughter. The offer was acceptable both to the prosecutor and to this court. Fresh information was filed in court on 6th March 2018 and the charge read over and all its particulars explained to the accused on the same day. He pleaded guilty.

The prosecution counsel presented the following facts:

That on 20th April 2014 at around 1.00pm the accused was in the company of Brian Kamau the deceased, one alias Roger, one alias Shoku and Joel Wanjohi at Kiamaiko. An argument arose between the accused and the deceased over a memory card. In the process the accused took a knife and stabbed the deceased and the accused ran away carrying the knife. The deceased tried to follow the accused but he fell down. Joel Wanjohi and the others rushed to where the deceased had fallen. They found him bleeding. They rushed him to a nearby clinic where he was referred to Kenyatta National Hospital where he died while undergoing treatment. Post mortem examination was conducted on his body by Dr. Ndung'u J. R who formed the opinion that the deceased died as a result of penetrating chest and abdomen stab wounds. That the whereabouts of the accused was not known until 3rd November 2017 when he was spotted by Nelvin Musyoki and Teresiah Wanjiku parents of the deceased at Kiamaiko near his mother's food kiosk. He was arrested and taken to Huruma Police Station where he was charged with murder. He was examined on 10th November 2017 and found fit to stand trial. He was taken to court on 27th November 2017 to answer to murder charge which has now been reduced to manslaughter. The prosecution counsel produced the post mortem report as exhibit 1 and the mental assessment report as exhibit 2.

The accused admitted the above facts as a true reflection of what had happened. Consequently, this court entered a plea of guilty and convicted the accused on his own plea of guilty. Before sentencing the accused this court called for a report from the probation office. The report was filed on 13th April 2018. I have read the same and I find it favourable. It confirms there is no bad blood between the family of the deceased and that of the accused after the two families met and discussed the matter.

In his mitigation before sentence the accused through Mr. Njuguan, advocate, submitted that he is remorseful for causing the death of the deceased and he apologized for his actions. He told the court that he is a first offender and that at the time of committing the offence the accused was a minor aged 14 years; that he has been assisting his father in running the family business of selling goats and that he has no previous criminal records. The court was also informed that there is no bad blood between the family of the accused and that of the deceased because both families have been holding meetings and resolved to live in peace. This has been confirmed in the probation report as shown above.

I have considered the circumstances of this offence and note that it was unfortunate that the deceased lost his life out of a minor disagreement over a memory card. It seems to me that the accused, like most youths in today's world, lack guidance on how to handle and resolve issues amicably. I have taken into account that the accused is a young person and has no previous criminal records and that he regrets having caused the death of the deceased. It is however not lost to me that the accused requires counseling and guidance to equip him with social skills on how to handle disputes instead of resorting to violence. It is my view that no number of years can replace a life lost and given that the accused committed this offence when he was a minor a non-custodial sentence is the appropriate penalty under these circumstances. For the above reasons, I hereby sentence the accused to two years' probation supervision during which time the accused shall also undergo counseling sessions. He is hereby informed of his right of appeal within 14 days from today's date. Orders shall issue accordingly.

Delivered, signed and dated this 17th day of April 2018.

S. N. Mutuku

Judge