

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL CASE NO. 25 OF 2017

REPUBLIC.....PROSECUTOR

VERSUS

PETER KYALO KALOKI.....ACCUSED

RULING ON SENTENCE

1. The accused herein **PETER KYALO KALOKI** has been charged with the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The particulars are that on the 18th day of November, 2017 at Kanguu village, Kivaa location in Masinga Sub-County within Machakos County unlawfully killed **MICHAEL MUEMA KALOKI**.

2. The accused pleaded guilty to the charge and was duly convicted on his own unequivocal plea of guilty as per the proceedings dated 25/07/2018.

3. Mr. Machogu learned Counsel for the state indicated that the accused be treated as a first offender as there were no previous criminal records.

4. Mr. Mutia learned counsel for the accused presented mitigation on his behalf. He submitted that the accused was remorseful and regrets the circumstances under which the offence was committed. He submitted that the accused became a victim of circumstances in that he was only intervening to save his mother whose life was under threat by the deceased who intended to kill her with bow and arrows. Learned counsel further submitted that the accused is a brother to the deceased and still a young man who duly reported the incident to the authorities and who has duly agreed to accept the lesser charge of manslaughter. Counsel sought for a non-custodial sentence.

5. This court called for a pre-sentence report on the accused by the Machakos County Probation Officer. The same was duly availed and is dated 13/08/2018. The summary of the report is that the accused is suitable for a non-custodial sentence since the offence took place while the accused was trying to save his mother from being killed by the deceased. The report also paints the deceased as a person who had caused a lot of trouble and anguish to his mother and siblings as well as a trouble maker to the community and the Akitondo clan. The report further revealed that the deceased had been abusing drugs and had sold his parcel of land and then squandered the proceeds and wanted the family to give him more land. The report also revealed that the deceased had earlier dug three graves in anticipation of killing his mother, sister and accused (brother) for opposing his quest for more land from the family. The report also indicates that the character of the accused within the community is good and they are ready to accept him back. The community is reported to be breathing a sigh of relief as the deceased had been a trouble maker. The Akitondo clan have agreed to compensate the family of the deceased with fourteen herd of cattle as per its Kamba customs.

6. I have considered the mitigation presented on behalf of the accused by his learned counsel as well as the comprehensive pre-sentence report of the County Probation Officer. The report is in favour of a non – custodial sentence. The accused is a first offender and the community and clan members appear to speak very well of him and are ready to embrace him back into the society. The Akitondo clan have embarked on plans of compensating the family of the victim as per its customs. Indeed the demise of the deceased was tragic and had not been anticipated. It is a cruel twist of fate that events turned for the worse for the deceased who had earlier on prepared three graves in anticipation of wiping out his family members only for him to die and be interred into one of those graves. The accused has stated that he regrets the incident. Even though the community appear to suggest that the death of the deceased was good riddance, I find that no person has a right to wish another death since life is sacrosanct. Considering all the circumstances of this case, I find a non-custodial sentence is appropriate. Consequently the accused is ordered to be placed under probation for a period of three (3) years.

It is so ordered.

Dated and delivered at Machakos this 17th day of August, 2018.

D.K. KEMEI

JUDGE

In the presence of:-

Meroka for Gikonyo - for the State

Langalanga for Mutia - for the accused

Josephine - Court Assistant