

REPUBLIC OF KENYA

IN THE HGI COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 9 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

F S O ALIAS M.....ACCUSED

RULING ON SENTENCE

F S O alias M was charged with the murder of Hassan Lokorachi contrary to Section 203 as read with Section 204 of the Penal Code. The offence occurred on 28th November 2015 at Kenya Cinema, Moi Avenue, Nairobi. He was tried and convicted of the lesser charge of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. In his mitigation before sentence, the accused through his advocate Mr. Ogada, mitigated for leniency. He informed the court that he is HIV positive but is on regular treatment; that he has a family with two young children under his care and is the sole bread winner for his family. The accused told the court that he is remorseful for this offence; that he did not expect the deceased to die as a result of the quarrel and that he had not intended to cause the death of the deceased. He asked the court to exercise leniency in sentencing him.

Before pronouncing sentence, this court called for a probation report to inform itself of the family background of the accused. The report was presented to court on 15th December 2016. I have read it and I note that although the accused told the court that he was remorseful, from the report this does not appear to be the case. I have also read the previous criminal record of the deceased. It shows that the accused was convicted for the offence of theft of motor vehicle parts and sentenced on 28th April 2009 to pay a fine of Kshs 20,000 in default to serve one year imprisonment. This record is contrary to what is stated in the Probation Report. I have noted from the Probation Report that the accused was convicted for possession of drugs and sentenced to one year probation sentence. It is not clear where the Probation Officer got this information of the previous record from and it could have come from the accused himself or from court records.

The family of the accused was not available for interview to confirm the information received from the accused. The Probation Report, in my view, is not favourable to the accused.

I have taken into account all the circumstances of this case as well as the accused person's previous criminal record. I have also taken into account his mitigation. The accused claims that he is ailing but this court is not able to verify his health status since he did not provide any information, save for his word, on the same issue. In my view the accused has not learned any lessons from the previous criminal records. I am of the opinion that a custodial sentence is appropriate for this offence and I hereby sentence F S O alias M to two (2) years imprisonment.

The law allows him the right of appeal and in that regard the accused has been informed of his right of appeal within the next fourteen (14) days. Orders shall issue accordingly.

Dated, signed and delivered this 20th December 2016.

S. N. Mutuku

Judge