



REPUBLIC OF KENYA



**Republic v VKL (Criminal Case E016 of 2022)
[2023] KEHC 17952 (KLR) (18 May 2023) (Sentence)**

Neutral citation: [2023] KEHC 17952 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL CASE E016 OF 2022**

JK SERGON, J

MAY 18, 2023

BETWEEN

REPUBLIC PROSECUTOR

AND

VKL ACCUSED

SENTENCE

1. VKL, the Accused Person herein, was initially arraigned before Court to face a charge of Murder. However, pursuant to the Plea Agreement executed between the Accused and the Director of Public Prosecutions dated 3rd March, 2023, the Accused pleaded guilty to the lesser charge of Manslaughter Contrary to Section 202 as read with Section 205 of the *Penal Code*.
2. The particulars of the charge are that on 28th day of August, 2022 in Bureti Sub-County within Kericho County, the Accused unlawfully killed DKL. The Accused was convicted.
3. This Court called for the Pre-sentence Report from the County Probation Officer, Kericho. The Accused was also given a chance to submit in mitigation.
4. Mr. Musyoki, Learned Senior Assistant Director of Public Prosecutions pointed out that the Accused is a minor aged 17 years and urged this Court to pronounce a sentence pursuant to Section 239 (1) (g) of the *Children Act* No.29 of 2022. He stated that a child can only be committed to a borstal institution for only a year.
5. Miss Kirui, Learned Advocate for the Accused stated that the Accused is remorseful and regrets killing his brother. She also pointed out that the Accused has been forgiven by the family. She urged this Court to mete out a sentence under the *Children Act*.
6. I have also taken into account the Pre-sentence Probation Report. In the Report, it is indicated that the Accused is aged 17 years and he is in Form 3 at [Particulars Withheld] Secondary School. It is said he is



humble, hardworking and well behaved. It is also pointed out that the Accused does not take alcohol nor does abuse any narcotic drugs.

7. It is however stated that the incident has disturbed him. The Accused's clan members who were interviewed have beseeched this Court to pronounce a non-custodial sentence to enable the community perform the traditional reconciliation and cleansing ceremonies.
8. It is also stated that the community is ready to welcome him back to society and have him integrated to create an environment to avoid stigma directed on him from the community. The community also stated that it is ready to accept back the Accused and urged this Court to be lenient and mete out a non-custodial sentence.

Having considered the sentiments of the prosecution plus the submissions in mitigation by the Accused and the Pre-sentence Report by the Probation Office, I am of the view that since the Accused is a child under Section 2 of the Children Act No.29 of 2022, the appropriate sentence to be pronounced is that prescribed under Section 239 (1) (g) of the Children Act No.29 of 2022 in which a child of the Accused's age should be dealt with under the Borstal Institutions Act Cap 92 Laws of Kenya. Under Section 5 of the Borstal Institutions Act, it is stated as follows:-

“Before sentencing a youth offender, a Court shall consider the evidence available as to his character and previous conduct and circumstances of the offence and whether it is expedient for his reformation that he should undergo a period of training in a Borstal Institution.”

9. A “Youthful Offender” is defined under the Borstal Institutions Act as a Person who has been convicted of an offence punishable with imprisonment and has been found by the Court at the time of such conviction to have attained the aged of fifteen years but to be under the age of 18 years.
10. However, under Section 8 of the aforesaid Act, before directing a youthful offender to a Borstal Institution, the Court must ascertain whether accommodation is available in a Borstal Institution for the youthful offender. The law limits the period for a youthful offender being in a Borstal Institution to a maximum of 3 years.

DATED, SIGNED AND DELIVERED THIS 18TH DAY OF MAY, 2023.

J.K. SERGON

JUDGE

In the presence of:

C/Assistant – Rutoh

S/Counsel – Mr. Musyoki

.....for the Accused

Accused

