

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCRC. NO.E003 OF 2020

REPUBLIC..... PROSECUTION

VERSUS

LABAN MAITHYA MUTAVA..... 1ST ACCUSED

JACKSON MITHEKA MUTAVA.....2ND ACCUSED

RULING ON SENTENCE

1. The two accused persons herein, initially charged with murder, were convicted of manslaughter contrary to section 202 as read with section 205 of the Penal Code (*Cap.63*), after the State and the defence signed a plea bargaining agreement.
2. Before considering sentence, this court ordered the filing of a pre-sentence report by the Probation Officer, which was filed, and the Prosecuting Counsel Ms. Gitau relied on the said pre-sentence report.
3. Defence counsel Mr. Kituku on his part, stated in mitigation that both accused persons were first offenders and were peaceful. Counsel added that it was the deceased who was troublesome in the community, and noted that this being a family matter, the family had forgiven the two accused persons for killing their own brother and asked for a non-custodial sentence.
4. I have perused the pre-sentence report of each of the two accused persons. The Probation Officer notes that the accused persons had now not been taking alcohol in prison, and recommend a non-custodial sentence for each of the two accused persons.
5. I have considered the mitigation and the circumstances of the case, wherein the incident occurred when all those involved had taken alcohol. I note that the accused are fairly young one in early 40s and the other in late 30s. They have also been in custody for one (1) year now.
6. That said however, a life has been lost recklessly. I find that a non-custodial sentence is not unsuitable, in this crime of violence resulting in loss of life. I sentence each of the two accused persons to serve three (3) years imprisonment.

Right of appeal explained.

DELIVERED, SIGNED & DATED THIS 6TH DAY OF OCTOBER 2021, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE