



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCR NO. 78 OF 2017

REPUBLIC.....PROSECUTION

VERSUS

BENJAMIN KYALO MULONZIACCUSED

(Formerly Machakos High Court Criminal Case No. 51 of 2010)

RULING ON SENTENCE

1. **Benjamin Kyalo Mulonzi** the accused was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code.

2. This court in its Judgment delivered on 3rd of December 2019 reduced the charge to manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and convicted him of the same.

3. The victim in this case was a younger brother of the accused. In his mitigation through his counsel Mr. Hassan the accused expressed remorse and regret for his actions. He said he is a family man with a daughter in Form 3.

4. The court thereafter called for a social inquiry report which has been placed before me. It is indeed a detailed and well captured report. It explains the circumstances under which the accused's behavior started deviating. He was abusing drugs and alcohol following a breakdown in his 2nd marriage. His 1st wife had died leaving him with an infant aged 16 months.

5. This child (female) is now going to form 4 this year. The accused's family is appreciated for ensuring that the child's education was not interfered with.

6. Upon remarriage he was blessed with two (2) children. As fate would have it the marriage did not last long and his wife left. She went away with his two kids and got married to another man.

7. The social inquiry report shows that the family is not ready to receive the accused back because of his past conduct. It is however not clear for how long they would want him to be away. Is it forever and is that the law?

8. I have noted that the accused's father died in 1996. The accused who is now aged 43 years having been born in 1977 was only 19 years when his father passed on. He married his first wife when he was around 23 years, and lost her at the age of 25 years. His subsequent marriage did not work and he was abandoned by the wife who left with the children. This was a big blow to him and he did not receive the psycho social support he needed most. He then turned to drinking and alcohol abuse.

9. The accused first appeared in court on 24th September 2010, and has been in custody ever since.

This is a period of over nine (9) years. He has not been exposed to alcohol and drug abuse. He has agonized over his life and the unfortunate results of his actions, and is remorseful. His mother and his siblings must find it in their hearts to forgive him. He cannot be left in prison forever.

10. It is so unfortunate that though the accused was first arraigned in court on 24th September 2010 it was not until 13th May 2019 that PW1 testified. There is no justification for this. I find that the accused has been sufficiently punished for what he did.

11. For proper settlement into the family, I will place the accused on probation. The county probation officer is hereby directed to play an active role in this by involving the Family and Administration.

12. Accused is hereby placed on probation for 12 months. The conditions are well explained to him.

Orders accordingly.

Delivered, Signed & Dated this 7th day of January 2020, in open court.

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H. I. Ong'udi

Judge