

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HIGH COURT CRIMINAL CASE NO. 19 OF 2017

REPUBLIC.....PROSECUTION

VERSUS

MMM.....ACCUSED

RULING ON SENTENCE

1. **MMM** the accused herein was first arraigned in court on 24/07/2017 on a charge of murder contrary to section 203 as read with section 204 of the Penal code. After a plea bargain agreement, the charge was reduced to manslaughter contrary to section 202 as read with section 205 of the Penal Code. On 9th December, 2019. The accused pleaded guilty to the reduced charge and was convicted.
2. The court called for a pre-sentence report which has been filed by the county probation officer Mr. Munyasya. He has confirmed that the accused hails from a family of nine (9) siblings and his parents separated in 1989 following his father's mental illness.
3. The accused's mother started living with the deceased Alexander Kusina Wambua in 2003, while the accused went to live with his real father until 2013 when he died. It's at that point that he (*accused*) started developing a mental illness.
4. I am giving this background so that its understood from where this problem started. He appears not to have received proper medication. When examined for mental assessment soon after commission of this offence the report filed in court on 12th January 2018 showed he was not fit to plead. The report is dated 29th August, 2017. He was placed on medication.
5. Upon review on 1st February 2018, he was found to have improved and was fit to plead. The 2nd report is dated 1st February 2018 and filed on 6th February, 2018. Plea was finally taken on 16th October, 2018.
6. It has been a journey and as can be seen from all these reports, the accused was not himself when he committed this offence. The family and administration have been interviewed and it's clear that the accused has never had any issues with people in his community. The area assistant chief gave a very good report of him.
7. His mother is ready and willing to have him settle at Kitise with her; she is also willing to give him proper support and ensure he gets medical attention.
8. I have considered the circumstances of the offence, the mitigation and the pre-sentencing report filed. The accused needs to be accorded continued treatment for his mental condition. We now have a medical doctor (Psychiatrist) posted at Makueni referral hospital. The mother to the accused and his siblings are asked to ensure the accused is taken to the said facility for continued treatment and proper management.
9. I therefore place the accused on probation for three (3) years under the supervision of the county probation officer who should monitor his progress in terms of treatment and behaviour.
10. Conditions of the probation order are clearly explained to the accused.

Orders accordingly.

Delivered, signed & dated this 12th day of February, 2020, in open court at Makueni.

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H. I. Ong'udi

Judge