



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL CASE NO. 1 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

T C P.....ACCUSED

RULING ON SENTENCE

1. The accused person who is a minor (below 18 years) has been found guilty of manslaughter contrary to section 202 of the Penal Code (Cap. 63), following the recording of a plea bargain agreement between the prosecution and the defence.

2. The maximum sentence for the offence is life imprisonment. The subject is however a minor and Article 53 of the Constitution of Kenya 2010 has special provisions for punishment applicable to minors, also called children. In this regard the Constitution specifically provides as follows:-

“53 (1) Every child has the right

(a).....

(b) not to be detained, except as a measure of last resort, and when detained, to be held –

(i) for the shortest appropriate period of time; and

(ii) separate from adults and in conditions that take account of the child’s sex and age.

(2) A child’s best interests are of paramount importance in every matter concerning a child.”

3. The Children Act No. 8 of 2001 also has provisions regarding the punishment for children in conflict with the law. Section 190 of the Children Act provides for restrictions on punishment for children and states as follows –

“190 (1) No child shall be ordered to imprisonment or to be placed in a detention camp.

(2) No child shall be sentenced to death.

(3) No child under the age of ten years shall be ordered by a Children’s Court to be sent to a rehabilitation school.”

4. Section 191 of the Children Act, provides for the manner of dealing with children who are in conflict with the law. With regard to children who have attained the age of 16 years it provides that one of the methods of dealing with the child is to order him or her to be detained in a borstal institution as follows –

“191 (1) (g) in case of a child who has attained the age of sixteen years dealing with him, in accordance with any Act which provides for the establishment and regulation of borstal institutions.”

5. There are also various other discretionary less severe options provided by the Act available to the court, in dealing with such cases under section 191.

6. The recently published Sentencing Policy Guidelines of the Judiciary, published in 2016 also have provisions on how courts should deal with child offenders. Under section 20.11 page 38 it is provided as follows –

“20.11 Custodial orders should only be imposed as a matter of last resort when dealing with children. Committal of juveniles to rehabilitation schools or borstal institutions would be reserved for cases in which non-custodial measures have failed. Section 191 of the Children Act offers a wide range of rehabilitation orders that the court should consider.”

7. In addition to the above, section 20.16 of the Sentencing Policy Guidelines also provides as follows –

“20.16 Before placing a child in a particular borstal institution, the court must enquire the availability of space in that institution. A child should only be placed in an institution if there is available accommodation.”

8. Though the plea bargaining agreement proposes committal of the child herein to a borstal institution, I have not been assured that there is available accommodation in any of the existing borstal institutions in Kenya.

9. From the circumstances of the case and its facts, it appears to me that the death of the deceased was caused by a mere careless act of this offender. I caution him to learn about the consequences of careless acts on others, and to be of good and responsible behaviour from now on. He has been in custody for about 6 months now and I think that is adequate punishment. I discharge him under section 35 (1) of the Penal Code.

10. Orders accordingly.

Dated and delivered at Garissa this 5th day of October, 2018.

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George Dulu

JUDGE