



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

CRIMINAL CASE (MURDER) NO. 7 OF 2018

REPUBLIC.....STATE

VERSUS

I S O.....ACCUSED

JUDGMENT

1. I S O was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. The particulars of offence were that on the 7th day of March 2018 in Tana Delta Sub County within Tana River County murdered **Joseph Kazungu Katana**. He pleaded not guilty and was remanded at Malindi Remand home pending psychiatric evaluation and age assessment.

2. Subsequently a mental evaluation report and age assessment report were filed in court. The age of the offender was approximated to be 16 years.

3. When the matter came up before me on 20/6/2018 for pre-trial directions, prosecution counsel **Mr. Kasyoka** informed the court that the Office of Director of Public Prosecution (ODPP) had received a proposal for plea negotiation from **Mr. Gekanana** counsel for the defence. The court granted the parties time to so negotiate as permitted by section 137A of the Criminal Procedure Code. A plea agreement was subsequently presented to the court on 30/10/2018. In consideration of the fact that the offender was a minor, the court required the presence of the offender's family in court. They duly obliged and confirmed to the court that they had actively participated in the plea negotiations.

4. The court after putting relevant questions to the offender was satisfied that the offender, though a minor, understood the plea bargaining process and had entered into the plea agreement voluntarily. Consequently the court accepted the plea agreement.

5. The offender then pleaded to the lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code.

6. The facts of the case as presented by the prosecution counsel follows. The subject was herding father's cattle carrying a machete and a herding stick. Some of the animals strayed on to the farm of the deceased. The deceased who was planting maize asked him to take away the animals. A quarrel ensued and the deceased disarmed the accused. The accused had a knife concealed in his clothing which he drew and stabbed the deceased and then ran away. The matter was reported to the police and investigation commenced. Photographs of the deceased [exhibit 1 (a) and (b)], photographs of the cattle [exhibit 1 (c) and (d)]; the certificate prepared by the scene of crime officer [exhibit 2]; the post mortem report dated 10/3/2018 in respect of deceased [exhibit 3]; and the mental evaluation report on the accused [exhibit No. 4] were availed to the prosecution to support the charge of murder which has now been reduced to manslaughter.

7. The offender accepted the facts as true and was convicted on his own plea of guilty.

8. Mitigation was offered by Mr. Gekanana on behalf of the accused. Counsel drew the court's attention to the probation report and the victim impact report. Both reports were favourable to the offender who was described as being remorseful. The report also described the circumstances of the offence and clearly indicated that the offender's family and the victim's family had reconciled. On his part the offender addressed the court and sought forgiveness for the omission. The prosecution counsel asked the court to consider the offender as a first offender.

9. I have considered the mitigation. I note that the offender is remorseful. I further observe that he is now 16 years old and was 15 at the time of commission of the offence. Further I have taken into consideration that the two families have reconciled. In this respect minutes of the reconciliation meetings and the agreement filed in court shows that the family of the deceased has received monetary compensation which the parties described as "condolence and apology" to the tune of three hundred thousand shillings (Kshs. 300,000/=).

10. Having taken all factors into consideration, I am persuaded that a non-custodial sentence is appropriate in this case. The minor offender is sentenced to serve 3 years probation. He shall enroll either in a school or an institution that offers vocational or skills training within 3

months of today. Evidence of enrolment shall be provided to the probation officer. Further, the minor offender shall maintain a high level of discipline in the institution of learning that he shall join. Failure to adhere to the probation terms shall lead to reversal of the non-custodial sentence.

Orders accordingly.

Judgment delivered dated and Signed at Garsen on 7th day of November, 2018.

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R.LAGAT KORIR

JUDGE

In the presence of

.....Court Assistant

.....Accused

.....for the Accused

.....for the State

..... Probation Officer