



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

HIGH COURT CRIMINAL CASE NO. 75 OF 2016

REPUBLICPROSECUTION

VERSUS

COLLINS OBENDA GAVALWA.....ACCUSED

RULING ON SENTENCE

1. The court has considered that the accused pleaded guilty to **manslaughter** contrary to **section 202** of the **Penal Code**. This followed a successful Plea Agreement between the defence and prosecution. It has saved court precious time.
2. The accused and deceased were brothers, the accused being the older one. They fought over water. It emerged from the facts that the younger brother – deceased herein had a fiery temper and was incensed just because his brother used up his drinking water.
3. I have considered the accused mitigation by counsel on behalf of the accused. Counsel urged that the accused is 22 years old and was remorseful for the incident and he also presented himself to the police albeit after travelling all the way home to inform his family first.
4. The court called for a Probation Report and the concern was to know how the family, especially the father would react to a non-custodial sentence and what their future conduct or altitude towards the accused would be.
5. I have received the Report. It shows that the accused admitted the offence and regrets his brother's death. He also alluded to anger issues he has. The family especially the father still has great pain for loss of his other son but pleaded that accused be given a chance to serve a non-custodial sentence. He pledged to assist with his rehabilitation, resettlement and re-integration to the society.
6. I have considered the circumstances of the offence. This is a tragic occurrence and the family feels the weight of it. It will be a double tragedy to put away the accused. The facts that he had admitted his actions, is remorseful and willing to make amends makes him a suitable candidate for a Probation term as recommended by Probation.
7. The accused has expressed willingness to serve a Probation term. I have warned him of the conditions he is required to meet.

1. be of good behaviour and not commit any other offence during the Probation period.

2. Keep company with persons of good conduct.

3. Obey the Probation Officer who will be supervising him and adhere to all terms and conditions set by them.

4. That if he breaches any of these conditions he will be brought back for an alternative sentence.

8. The accused is placed on Probation for a term of three (3) years.

9. He has no right of appeal against the conviction.

10. The Probation Department to organize Guidance and Counselling sessions to enable the accused control his temper better.

DATED AT NAIROBI THIS 14TH DAY OF JUNE, 2017.

LESIT, J

JUDGE

14/6/2017