

REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL CASE NO. 23 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

R M M.....ACCUSED

SENTENCE

R M M (hereinafter referred to as “the Accused”), was initially charged with the offence of murder contrary to section 203 and section 204 of the Penal Code. An offer was made subsequently by the Defence counsel to plead to the offence of manslaughter, which offer was accepted by the Prosecution. The Accused thereafter pleaded guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars of the offence were that on 22nd February 2015 at [Particulars withheld] village, [Particulars withheld] sub-location, in Mukaa Sub-County within Makueni County, he unlawfully killed K K K.

On 22 February 2015 the deceased K K K and his friends were playing at his home at [Particulars withheld] village [Particulars withheld] Sub location. The Accused who was aged 17 years at the time, passed by where the deceased was playing, and the deceased jokingly called the Accused by his nickname M. This annoyed the Accused person prompting him to advance towards the deceased, and he lifted the deceased whereupon the deceased fell, hit his head on the ground and became unconscious. A polythene paper fell from the deceased pockets which the Accused picked and left the deceased on the ground.

The deceased friends, S K and E W, who witnessed the event said they saw the deceased lying down for about 5 minutes. The two witnesses were aged 10 and 8 years respectively and the deceased was aged 12 years. When the deceased regained consciousness he realized the polythene paper was missing from his pocket, and upon inquiry from his friends he was told the accused took the polythene paper. The deceased decided to follow the Accused together with his friends, and demanded the money (100/=) from the Accused which was in the polythene paper. The Accused person slapped him on the head twice, and left. The deceased also left for his home crying. He found his mother at home who was informed of what had transpired.

A short while later on the same day the deceased collapsed and was taken to a nearby dispensary, and referred to Machakos Level 5 Hospital and later to Kenyatta Hospital where he succumbed to death on 27th February 2015. The post-mortem was conducted on 6th March 2015 and the cause of death was head injury due to blunt force trauma. The Accused was arrested on 26th February 2015 and charged with the offence of assault and later charged with murder on 27th February 2015.

The Accused admitted the above-stated facts that were narrated to the Court by Mrs. Saoli, the learned Prosecution counsel. The Prosecution in addition produced as an exhibit a post-mortem report on the deceased.

The Accused was convicted of the offence of manslaughter on his own plea of guilty, and I am now called upon to pass sentence bearing in mind that the maximum sentence for the offence of manslaughter is life imprisonment under section 205 of the Penal Code.

Mr. Kamanda, the learned Defence counsel, submitted in mitigation that the Accused is a young person who is now aged 19 years. Further, that he was a student at [Particulars withheld] School in Form 3 and

is desirous of going back to school. It was stated that the accused is remorseful for what happened and prays for leniency from this court, and pleads for a non-custodial sentence to enable him to go to school. In addition, that he has not wasted the courts time by pleading to the charge of manslaughter, and has been in custody and has learnt a lesson. The Court was informed that the family of the deceased and accused have reconciled traditionally, and there is no animosity between them. Documents to show that the Accused was in school were availed to the court by the Defence Counsel.

The Court also called for a pre-sentencing report from the Probation Service, which report was filed in Court on 12th July 2016. It was noted therein that the Accused is a first offender, and admitted committing the offence against the deceased who was friend and a close relative. Further, that he was desirous of going back to school and complete his education. It was also reported that the accused and victims family had commenced the compensation process under Kamba customs, and were both not against a non-custodial sentence. The probation report recommended that the Accused's home environment is suitable for rehabilitation, and that he be placed on a probation sentence during which he will undergo counseling and rehabilitation on anger management.

I have considered the facts of the case and the circumstances in which the deceased's death occurred, as well as the mitigation and probation report. It is evident that the Accused had no intention of killing the deceased by the act of lifting him off the ground. The act of falling on the ground is what caused the deceased death and there was therefore no malice aforethought.

I consider a non-custodial sentence to be appropriate in the circumstances of this case, and for the reasons that the accused is a young student who is aged 19 years and is desirous of pursuing his education; he has been in custody for more than one year since his arrest and arraignment in court on 19th March 2015; and his family and the victim's family have reconciled and support a non-custodial sentence.

I accordingly sentence the Accused to one (1) year probation sentence, **under the supervision of and direction of the Probation Officer in Makueni County, and order that the Accused to be hence forth released from custody unless otherwise lawfully held.**

Orders accordingly.

DATED AND SIGNED AT MACHAKOS THIS 13TH JULY 2016.

P. NYAMWEYA

JUDGE