

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO. 33 OF 2012

REPUBLIC.....PROSECUTOR

VERSUS

D K R.....ACCUSED

SENTENCE

The Accused person herein, **D K R**, pleaded guilty to the offence of Manslaughter contrary to **Section 202** as read with **Section 205** of the **Penal Code** pursuant to the plea agreement executed on 28th November 2013 and approved by this court on the same date. The accused had initially been arraigned before this court to face the offence of murder which charge was commuted to that of manslaughter upon the execution of the plea agreement.

The brief facts of the case are that on 18/09/2012 at about 5.45pm, the accused fought with **Alfred Kipkorir Bett** deceased over a girl. The accused is said to have stabbed the deceased fatally injuring him. There is also another reason that is, the duo fought due to an outstanding debt of Kshs.50 owed to the deceased. From the Probation Report, the dominant factor which caused the fight is a girlfriend the duo shared. It is stated that on the aforesaid date the accused met his girlfriend who had gone to grind maize at a nearby Posho Mill. Coincidentally, the deceased had agreed with the same girl to meet on the same date. The deceased saw the accused walking together with the girl. He decided to follow them closely. When the girl saw the deceased charging on them, she quickly sped off to the safety of her home. The deceased is said to have confronted the accused and demanding from him to admit that he made a mistake. Shortly, the deceased got hold of the accused by the sleeves of his shirt and slapped him. This turn of events caught the accused by surprise. He removed a knife which he used to stab the deceased on the throat before disappearing into the nearby bush. Members of the public rushed to the scene and took the deceased who was profusely bleeding to Kapkatet District Hospital where he was pronounced dead on arrival. The accused was later arrested at Lolgorien where he had gone to hide. An autopsy was done on the deceased's body and the pathologist formed the opinion that the deceased died as a result of stab wound on the neck causing vessel injury with severe bleeding and attendant to injury to the trachea and oesophagus.

Before pronouncing the order on sentence, this court called upon Miss Kivali, the learned Prosecuting State Counsel to provide the past criminal record of the accused. This court further requested Mr. Orina, learned Counsel for accused to submit facts in Mitigation. This court further called for a probation report. I have considered the submissions of learned counsels from both sides plus the Probation Officer's Report. It is clear from the facts outlined, the probation officer's report and the submissions in Mitigation that the accused is a boy aged below 18 years. He is a first offender. The accused being a child should only be sentenced under **Section 191** of the **Children Act**. Mr. Orina has urged this court to make an order placing the accused under a borstal institution. I have carefully gone through the probation officer's report and it is clear that the victim's family are willing to forgive the accused and are looking forward to participate in the traditional cleansing, reconciliation and compensation. The report also indicates that the accused's family and the clan members have initiated reconciliation efforts. They have also held various meetings geared towards traditional cleansing and compensation. There is a recommendation that the accused be given a non-custodial sentence. After a careful consideration of all the factors, I think a non-custodial sentence is the fairest in the circumstances. This will allow the accused, his family, clan and community at large to be closely engaged in the reconciliation process and to organize for the Kipsigis traditional cleansing ceremony and the victim's compensation. The Probation office has also undertaken through its report to assist to supervise, reintegrate and facilitate the settlement of the saga in conjunction

with the two families. I hereby order that the accused person be released from custody to serve a two year probation under the supervision of Sotik District Probation Officer. During this period the accused should be of good behavior.

Dated, signed and delivered in open court this 6th day of March, 2014.

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J.K.SERGON

JUDGE

In the presence of:

Mr. Lopokoyit for Director of Public Prosecution

Mr. Orina for Accused