



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL CASE NO.3 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

RSO.....ACCUSED

JUDGMENT

1. The Accused person in this RSO is a minor aged 15 years old. He was charged with murder contrary to section 204 as read with section 204 of the Penal Code.
2. The particulars of the charge of the charge that on 24/1/2018 at Sondu Township **KAPLELARTET** location in Sigowet Soin Sub-County within Kericho County murdered **JAMES OCHIENG OCHOLA**.
3. The subject entered into a plea agreement and pleaded guilty to the lesser charge of Manslaughter contrary to section 202 as read with section 205 of the Penal Code.
4. The facts of the case as given by the prosecutor were as follows;

“On the 24th January 2018 between 7.30pm to 8.00pm the deceased was relaxing outside his house smoking cigarette. His part time house help called Elizabeth Ojwang then went to where he was and informed him that his supper is ready. She then left him and went to her house which was a few metres from the deceased’s house. The deceased then later went to his house to take supper and after a short while heard a distress call, shouting for help from neighbours.

The neighbours, who are witnesses in this case responded to the distress call and rushed to the deceased’s house and others also shouted for help from other neighbours. One of the neighbours telephone the deceased’s part time house help (Elizabeth Ojwang) informing her of what was happening and others called the police.

While at the deceased’s house, the neighbours who responded to the distress call found the door to the deceased’s house locked from inside and the accused person inside trying to escape from the roof top.

The neighbours then cordoned the house and forced opened the door of the house. They went inside and found the deceased lying dead on the floor next to his bed. They also found the suspect who they arrested while trying to escape through the roof.

The police arrived and the accused was handed over to them. Police re-arrested and took him to the police station. The body of the deceased was taken to Sigowet Sub-County Hospital Mortuary where post mortem was conducted by Dr. Samuel Lagat on 30th January 2018. After post mortem, Dr. Langat formed opinion that deceased died of asphyxia secondary to strangulation after torture.

5. The pre-sentence report was filed dated 21/10/2020 which stated that the subject is remorseful and praying for forgiveness and pardon. Further that he comes from a humble background without strong social support.
6. The Probation Officer recommended institutional rehabilitation at **SHIKUZA BORSTAL** institution subject to the discretion of this court.
7. The defence counsel raised an oral Preliminary Objection prior to sentence on the ground that section 12 of the Child Offender’s Rules Order the Children Act, 2010 provide that the maximum period a child should be held in custody is 6 months after which he should be released.
8. The counsel further submitted that Article 50 of the Constitution which provides that each case should be decided expeditiously without

unreasonable delay. The learned counsel asked the court to discharge the subject who has been in custody for over 2 years.

9. The prosecution opposed the objection and subject would not be released on bond since his life was in danger and further that Article 50 (e) does not set out what "reasonable time" means.

10. The prosecution further submitted that every constitutional right has a limit as provided for in Article of Constitution and it was in the best interest of the child to keep the subject herein in custody for his own safety and therefore Article 53 (d) of the Constitution was complied with.

11. The prosecution relied on the case of **R v S. T (a child) [2006]eKLR and KAZUNGU KASIWA MKUNZO and ANOTHER v R [2006]eKLR** where the courts said that to dismiss a serious case because 12 months had expired would be a travesty of justice.

12. I have considered the submissions in the preliminary objection raised by the defence counsel. I find that the subject herein was held in custody for his own good and therefore his rights were not violated. I dismiss the objection for want of merit.

13. The subject in this case went into the deceased's house and killed him after locking the door from inside and after torturing him.

14. The subject was arrested while trying to escape from the house through the roof top.

15. The motive for the crime is not clear although the Probation Officer's Report said the deceased owed the subject money. The subject ought to have used other lawful means to get his money. He ought to be rehabilitated in an institution. The subject requires counselling and guidance before he can be restored back to society.

16. I commit the subject to **SHIKUZA BORSTAL** institution for a period of 3 years to availability of a vacancy.

17. This matter will be mentioned on 2/12/2020 for the Probation Officer to confirm availability of **SHIKUZA BORTAL** institution.

Delivered, dated and signed at Kericho this 19th day of November 2020.

A. N. ONGERI

JUDGE