



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL CASE NO. 14 OF 2017

LESIT, J

REPUBLIC.....PROSECUTOR

VERSUS

ANTHONY KARIUKI KAMA.....ACCUSED

RULING ON SENTENCE

1. The accused **ANTHONY KARIUKI KAMAU** was arraigned before the High Court for murder contrary to **section 203** of the **Penal Code** whereby he pleaded not guilty. Through a Plea Bargaining Agreement made pursuant to **section 137A-O** of the **Criminal Procedure Code** and entered on 28th November, 2018, the charge against the accused person was substituted to manslaughter contrary to **section 202** as read with **section 205** of the **Penal Code**, to which the accused was convicted on his own plea of guilty to the charge.
2. I have taken into consideration, one that the accused was arraigned in court on 5th April, 2017 and since then has been in custody pending his trial. Secondly, I have considered the fact that the accused pleaded guilty to a lesser charge thus saving the court precious time.
3. The sentence for the offence of manslaughter is provided for under **section 205** of the **Penal Code**. It prescribes that *‘a person convicted of manslaughter is liable to imprisonment for life.’*
4. The Prosecution has treated the accused as a first offender.
5. I have considered the mitigation made on behalf of the accused by his counsel, Mr. Businge. Counsel urged that the accused is still full of life and if pardoned, he would use the remaining years for the benefit of his family and himself. Counsel urged the court to consider favourably the fact the accused did not waste the court’s time but chose to enter into a plea bargain. Learned defence counsel urged that while in prison the accused had attended certificates after attending courses an indication that he has chosen to follow God and has reformed and learned a great lesson.
6. Mr. Businge submitted that the accused has been the sole breadwinner of his family and has a four (4) year old daughter who needs fatherly love and care. Counsel urged the court to give the accused a non-custodial sentence.
7. I called for a Pre-Sentence report from the probation which I have considered. It gives the accused background, statement from his birth mother and a Victim Impact Statement from the mother of the deceased who was also wife of the accused. The Probation Officer found that the accused freely admitted the offence and blamed himself on grounds that out of frustration, when the deceased, who was his stepson, was being naughty as he tried to discipline him for urinating in bed, he pushed the deceased. The accused alleged that unfortunately the deceased fell on the couch and then to the floor thereby sustaining injuries which led to his death.
8. The Probation Officer found that the accused was remorseful for his actions and that he said that he has learnt from his mistakes while in remand and that he is now a better person having undergone a spiritual course christened *‘safari ya mfungwa’*, discipleship and received baptism, and that he sought for a second chance to enable him provide for his young daughter who is now living with his mother.
9. The mother of the deceased who was also the wife of the accused at the time of the offence stated that she met the accused when the deceased was eight (8) months old and during the two (2) years that they lived together as husband and wife, the accused loved the deceased as his own and provided for him adequately; that he was never violent to the deceased and when it came to discipline, the accused never went beyond limits to inflict harm or pain. She stated that she has forgiven the accused unconditionally and has made peace with him and has nothing against him. She added that she has moved on in her life.
10. The mother of the accused was also interviewed. She blamed excessive alcohol consumption for the incident noting that the accused was otherwise a peace loving person.

11. The Probation Officer recommended that since the accused is a thirty (30) year old and was a first offender who has expressed remorse for his actions and considering he is now a better person having undergone spiritual training and baptism while in remand and the deceased mother having forgiven him unconditionally, that the offender is suitable to be placed on a non-custodial sentence and to attend guidance on anger management and on the dangers of alcohol, drug and substance abuse in order to rehabilitate him. In addition, the Probation Officer stated that if the accused was given a non-custodial sentence, the accused mother is willing and ready to assist the accused in his rehabilitation, resettlement and reintegration.

12. I have noted that the accused has been in custody for a period of two (2) years and I have also considered his age. I have also considered that the accused is remorseful for this offence.

13. The circumstances of this case are very unfortunate. The pathologist found that the deceased was shaken to death. The reason for the punitive shaking, that he had urinated in the bed. That was unfortunate as the deceased was only 3 years old and could not be blamed for doing what was natural of children to do. In addition he was not the only child in that bed at the time, the accused own daughter was also in the bed. It was discriminative for the accused to choose the child he did not sire to punish for that.

14. I find that the accused is remorseful for the offence. He has been in custody for almost two years. He has alcohol addiction which contributed to the offence according to the mother, and therefore needs more time to fully reform and overcome that weakness. I find that a non-custodial sentence will not suffice in this case. As such, I sentence the accused to an imprisonment term of six (6) years.

DATED AT NAIROBI THIS 28TH DAY OF MARCH, 2019.

LESIT, J

JUDGE