



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NO. 50 OF 2017**

**LESIT, J.**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**STEPHEN KADENGE OCHOGO.....ACCUSED**

**RULING ON SENTENCE**

1. The accused **STEPHEN KADENGE OCHOGO** was convicted for the offence of **murder** contrary to **section 203** of the **Penal Code**. Under **section 204** of the **Penal Code**, the sentence for murder is death.
2. I have considered that the accused was arraigned in court on the 13<sup>th</sup> November, 2017 and has been in custody throughout his trial a period of one year five months.
3. The Prosecution has treated the accused as a first offender.
4. Mr. Wamwayi, counsel for the accused in mitigation urged that the accused is young being twenty seven (27) years old. Counsel urged that the accused is the sole breadwinner of his family and had a wife and a child. He submitted that the accused was remorseful for the events which occurred and that he was under the mistaken belief that he was disciplining a child. Counsel pleaded for leniency. He urged the court to consider that its hands are not tied and that it has the discretion to allow the accused live a normal life and that perhaps the court can assist him overcome his anger.
5. Before sentence I called for a Pre-sentence report which has been filed. The report includes the accused background, the accused attitude to the offence, and the accused family's attitude to the offence. There is also a Victim Impact Statement from the father of the deceased.
6. The Probation Officer states in the report that the accused finished secondary school and after training as a P1 teacher got employed in a private primary school academy. The report shows that the accused denied having committed the offence and blamed her death on her ill health and a fall. He had no remorse for the deceased death. According to the Pre-Sentence Report the accused urged the court to be lenient to him on grounds that he is married with a wife and one child and that both need his care and so does his parents and the rest of the family.
7. The other person interviewed was the wife of the accused. The other members of the family were not willing to be interviewed The Report shows that the accused wife attempted to feign ignorance about the brutality that was being meted upon the deceased and that she said that the offender only disciplined the child once when she relieved herself on the floor of their house. Further to this, the report states that the accused wife did not show any remorse feelings on the fate of the child until when she was prompted. However, she pleaded for mercy for her husband and said that he was their sole breadwinner and that his daughter needed his care, and added that she was still young and needed the care of her husband.
8. There is a Victim Impact Statement by the father of the deceased. The father reported that he was still in pain over the painful experience and the eventual death of his child. He stated that the accused through his wife Louse, who is his sister attempted to reconcile and seek forgiveness from him by offering him Kshs. 50,000/= which offer he declined. He stated that his wish is that the due legal process be followed and justice be served for his child.
9. I have taken into account the mitigating factors as expressed by the counsel for the accused. I have also considered the Pre-Sentencing Report from the Probation and the personal circumstances of the accused as stated therein, together with the Victim Impact Statement, including the sentiments by the father of the deceased.

10. The circumstances of the offence are very disheartening as they show clearly that the accused severely beat the deceased on several occasions. His wife was the first to note when she saw unsightly marks on the buttocks and thighs of the deceased two weeks before the deceased death. They were so severe that she had to seek the intervention of their pastor, who counseled the accused on the kind of measures he could take to discipline the child so as not to harm her due to her tender age.

11. It appears he did not learn from that experience because two weeks later, the accused called the same pastor to drive him and the child to hospital. The child was dead on arrival at the hospital. The post mortem report shows that the injuries suffered by the child were severe injuries to the head on front side and back; bruises and abrasions on the buttocks and thighs which were old scars. The findings of the pathologist was that the child had been assaulted for some time and for the immediate cause of death, that there was blunt force trauma causing multiple injuries to the head. He ruled out a fall or illness as the cause of death.

12. I have considered the nature and extent of the injuries on the deceased body. The accused caused consistent and sustained injury to the death over a period of time which is proof that his intention was to cause pain, suffering and the eventual death of the deceased. The accused has not shown any remorse, his countenance throughout the case speaking loudly to that fact.

13. Having considered all these factors as set out herein above, I find that a non-custodial sentence will not suffice. I sentence the accused to thirteen (13) years imprisonment.

14. The accused has a right of appeal against both the conviction and sentence within fourteen (14) days from the date of this sentence.

**DATED AT NAIROBI THIS 28<sup>TH</sup> DAY OF MARCH, 2019.**

**LESITT, J**

**JUDGE**