



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL CASE NO. 6 OF 2018

REPUBLIC.....PROSECUTOR

VERSUS

EMILY KAIPOI.....ACCUSED

SENTENCE

1. The accused herein, **EMILY KAIPOI**, was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. Through a plea bargain agreement made between the accused and the state on 8th March 2018, the said charge of murder was reduced to a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.

2. The particulars of the offence were that on 4th February 2018 at Engosipa village, Shartuka Location in Transmara West Sub-County unlawfully caused the death of **ERICK LELIKA**.

3. The accused pleaded guilty to the lesser charge of manslaughter and was consequently convicted on he own plea of guilty.

4. The accused and the deceased herein are mother and son respectively.

The facts of the case were that on the material day, the deceased then aged 18 years, who was the eldest son of the accused, disagreed with the mother over the payment of his school fees. Apparently, the deceased had been sent away from school due to lack of school fees and he demanded that the accused pays the fees so that he could resume learning. The accused was not able to raise the school fees and this angered the deceased who struck the accused on the forehead with a walking stick. The accused got angry and retaliated by throwing a metal pipe at the deceased. The pipe hit the deceased at the back of his head and he bled profusely. The deceased was rushed to hospital but was pronounced dead on arrival. The cause of death to be due to intra-cranial bleeding secondary to blunt force trauma.

5. In mitigation, Mr. Okenye learned counsel for the accused submitted that she was remorseful for the unfortunate incident that led to her own son's death. He added that the accused was a young widow with 7 young children, the youngest being only 3 months old. He implored the court to grant the accused a non-custodial sentence so that she could go back home and take care of her children.

6. In his report filed on 20th March 2018, the Probation Officer recommended a non-custodial sentence for the accused.

7. I have considered the very disturbing circumstances, under which the deceased, a very young man who was barely out of his teens, met his death. It is quite disheartening that the deceased had the temerity to hit his widowed and lactating mother on the forehead with a stick just because she was unable to raise his school fees. It is abundantly clear to me that the accused had no intentions of killing her son and that she threw the metal pipe at him in a fit of anger and at the heat of the moment. Quite unfortunately, the accused's unbridled anger led to the death of her own first born son. I am certain that the accused deeply regrets her actions as she will carry the heavy burden of having caused the death of her son in her conscience for the rest of her life.

8. Taking into account the totality of the circumstances under which the offence was committed, the accused's moving mitigation and the recommendations contained in the probation officer's report, I am persuaded that a non-custodial sentence would be the most appropriate penalty in this case.

9. Consequently, I sentence the accused herein to 6 months probation during which period she will be supervised by the probation officer of her area.

Delivered, dated and signed in at Kisii on 20th of March 2018.

W.A. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State
- Mr. Magara for the Accused
- Omwoyo court clerk