

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.26 OF 2016

REPUBLICPROSECUTOR

VERSUS

RKK.....ACCUSED

SENTENCE

1. The accused herein, RKK, was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code which charge was, by a plea bargain agreement on 28th March 2017 reduced to a lesser charge of manslaughter. The particulars of the offence were that on 4th September 2016 in Narok County, unlawfully caused the death of AKB. The accused pleaded guilty to the charge and was consequently convicted on his own plea of guilty.

2. The facts of the case were that on 4th September, 2016 accused, who was an uncle to the deceased caned the deceased, as way of disciplining him for having left a sufuria to burn on the fire after he, (the deceased) had prepared a meal.

3. In a bizarre turn of events, the body of the deceased was found inside a dam. The body had visible injuries on the head and a postmortem examination established that the cause of death to be intra cranial bleeding. The deceased was aged 12 years at the time of his death.

4. In mitigation, Mr. Nyagwencha for the accused submitted that he was a young man who was barely out of his teens and was KCPE candidate at the time he committed the offence. Mr. Nyagwencha pleaded for leniency on behalf of the accused.

5. The probation officer in his report filed in court on 26th May, 2017 recommended a non-custodial sentence for the accused.

6. I have considered the circumstances under which the offence was committed, the age of the accused and the recommendations of the probation officer's report. The accused used excessive force in his bid to discipline the deceased thereby injuring him fatally and in a bid to conceal his crime, decided to dump the body inside a dam. The senseless actions of the accused led to the death of an innocent young boy whose only crime was to forget to remove a sufuria from the fire.

7. The accused and the deceased are relatives and it is apparent from the probation officers report, that the family of the victim and that of the accused have reconciled and are willing to accept him back in their midst.

8. I therefore find that a non-custodial sentence would be a appropriate in this case. In the circumstances, I am of the view that the accused will benefit from a non-custodial sentence.

9. Consequently, I sentence the accused herein to 2 years probation during which period he will be supervised by the probation officer of his area.

Dated, signed and delivered in open court this 29th day of May, 2017

HON. W. OKWANY

JUDGE

In the presence of:

Mr. Otieno for the State

Mr. Bigogo for accused person

Omwoyo -court clerk