



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL CASE NO.30 OF 2016**

**REPUBLIC .....PROSECUTOR**

**VERSUS**

**JOHN ALLOYS OMAIKO.....ACCUSED**

**SENTENCE**

1. The accused herein JOHN ALLOYS OMAIKO, was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. However, by a plea bargain agreement made between the accused and the state on 29<sup>th</sup> March 2017, the said charge was reduced to a lesser charge of manslaughter. The particulars of the offence were that on 9<sup>th</sup> November 2016, at Rietebe Sub-location in Kisii Central District within Kisii County, he unlawfully caused the death of MICHAEL MACKNON. The accused pleaded guilty to the charge of manslaughter and was consequently convicted on his own plea of guilty.

2. The circumstances of the case were that the accused was the step father of the deceased. On the material day, being 7<sup>th</sup> November 2016, the accused violently caned the deceased upon realizing that he (deceased) had soiled his clothes, thereby causing him fatal injuries from which he succumbed 2 days later.

3. A post mortem report established the cause of death to be head injury due to blunt trauma.

4. In mitigation, Mr. Nyagwencha advocate for the accused submitted that the accused, who was a young man aged 30 years, was a married man with 2 young children to whom he was the sole breadwinner. He added that the accused was remorseful for the offence which happened as he was disciplining the child for defecating on his clothes.

5. The probation officer's report filed in on 23<sup>rd</sup> May 2017 recommends a non custodial sentence for the accused while observing that he is a first offender who can benefit from counseling and anger management.

6. I have considered the circumstances surrounding this case, the mitigation tendered by the accused's advocate and the probation officer's report. I find that the accused used excessive force in meting out corporal punishment on the deceased, who was then a young baby aged only 5 years, thereby resulting in his death.

7. I find that the "mistake" done by the deceased when he soiled himself did not warrant the brutal punishment meted out on him by the accused. The accused acted irrationally in the circumstances considering that the deceased was a young defenseless child who looked up to him for guidance and protection. The senseless actions of the accused led to the death of an innocent child and the recommendations of the probation officer notwithstanding, I still find that a custodial sentence would be appropriate in this case.

8. Consequently, I sentence the accused to serve 5 years imprisonment.

It is so ordered.

**Dated, signed and delivered in open court this 23<sup>rd</sup> day of May, 2017**

**HON. W. OKWANY**

**JUDGE**

**In the presence of:**

- Mr. Otieno for the State
- Mr. Nyagwencha for accused person
- Omwoyo -court clerk