



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MACHAKOS**

**CRIMINAL CASE NO. 25 OF 2014**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**F K N.....ACCUSED**

**SENTENCE**

F K N (hereinafter referred to as “the Accused”), was initially charged with the offence of murder contrary to section 203 and section 204 of the Penal Code to which she pleaded not guilty on 12<sup>th</sup> July 2016. An offer by the Defence counsel to plead to the offence of manslaughter was subsequently accepted by the Prosecution.

The Accused thereafter on 11<sup>th</sup> October 2017 pleaded guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The particulars of the offence were that on 22<sup>nd</sup> May 2016 in Kithyoko location of Masinga sub-county within Machakos County, she unlawfully killed I K N.

On the fateful day, being 21<sup>st</sup> May 2016 at about 4 pm at Kawangulu village, the accused F K N who was the mother of the deceased I K N told the deceased to go into the house and light a lamp. The deceased refused and hurled abusive words at the Accused. The deceased then told the Accused that she wanted to go to her boyfriend’s house.

The deceased’s boyfriend was called Kazee and he was already facing defilement charges in which the deceased was the complainant. The accused was angered by the conduct of the deceased more so by her intention to go to the boyfriend’s house. When the deceased eventually entered the home, the accused tied her hands and feet with a rope and started beating her with sticks. The deceased cried out and the deceased grandmother called J M heard the cries from her house which was about 40 metres away.

The grandmother, who was also the Accused’s mother went to the Accused’s home to find out what was going on. She found the accused had tied the deceased with a rope and was beating the deceased. She intercepted the Accused who stopped beating the deceased, untied her and took her to the house. Later on the Accused gave the deceased warm water to bath and they had supper and went to sleep.

The next day, the deceased had swollen legs and could not walk. The accused gave the deceased warm water to bath and porridge. On the night of 22<sup>nd</sup> May 2017 the Accused noted the deceased still had swollen legs and was in pain, and she massaged the deceased legs with warm water. On the following day she went and informed her brother, one T N, that the deceased was seriously sick, and the said T went to the accused house and found the deceased lying on the bed. He tried talking to her and she was unable to answer back and they decided to take the deceased to hospital.

The Accused and T were joined by their brother G M and their mother J N, who accompanied them and the deceased to Matuu Catholic dispensary. The deceased was examined and referred to Matuu Mediance Hospital where the deceased was pronounced died upon arrival. They were told to go and report at Matuu police station while the body of the deceased was preserved.

The Accused reported the death on 24<sup>th</sup> May 2016 at Kithyoku police post. The Officer Commanding the Police Station (OCS) accompanied them to the mortuary where the accused and deceased grandmother were arrested and taken to Maunga police station. Upon investigation J M was released and charge of murder preferred upon the accused. A post-mortem was conducted on the deceased’s body by Dr. Simon Muli Kioko at Mediance hospital mortuary on 31<sup>st</sup> May 2016. In attendance to identify the body were B N and J M N.

The Accused admitted the above-stated facts that were narrated to the Court by Ms. Mogoi, the learned Prosecution counsel, who also produced the post-mortem report as the Prosecution’s Exhibit 1. The Accused was convicted of the offence of manslaughter on her own plea of guilty, and I am now called upon to pass sentence bearing in mind that the maximum sentence for the offence of manslaughter is life imprisonment under section 205 of the Penal Code.

Mr. Muthama, the learned Defence counsel, sought for leniency in mitigation due to the fact that the Accused is a first time offender, and has

two other minor children who are dependent on her for their welfare and education. Further that the Accused is only guilty of exuberance in disciplining her children, and she was trying to raise her child in accordance with the Bible. Lastly, that the action the Accused undertook after the deceased became sick shows she cared for her daughter. It was submitted that the Accused is remorseful and the emotional scars she will carry for life is more than enough punishment.

The prosecution counsel Ms. Mogoi submitted the Accused can be treated as a first offender as they had no record of her previous conviction.

I have considered the facts of the case and the circumstances, in which the deceased's death occurred. It is evident that while the Accused may not have had the intention of killing the deceased, she would have known that her acts of tying up and beating the deceased would cause grievous harm. In this regard I note from the postmortem report produced as an exhibit that the deceased's had multiple scalded bruise wounds on her right and left lower limbs and on her left and right upper limbs, as well as a right thigh haematoma. The doctor who performed the postmortem further indicated that the causes of death was cardiac pulmonary arrest due to subdural haematoma in the head, left chest pleural effusion and typhoid fever.

The offence for which the Accused person has been convicted cannot therefore go unpunished in the interests of justice. The Court also notes in this regard that corporal punishment on children is outlawed by the law. I therefore find that a non-custodial sentence will not be appropriate in the circumstances of this case, and I accordingly sentence the Accused to four (4) years imprisonment after taking into account that she has been in custody for one and a half years.

The right of Appeal has been explained to the Accused.

Orders accordingly.

**DATED AND SIGNED AT MACHAKOS THIS 20<sup>TH</sup> DECEMBER 2017.**

**P. NYAMWEYA**

**JUDGE**