



**REPUBLIC OF KENYA**

**HIGH COURT AT NAIROBI**

**CRIMINAL CASE NO. 52 OF 2017**

**REPUBLIC.....PROSECUTOR**

**V E R S U S**

**LAVENDER AOKO OCHIENG.....ACCUSED**

**RULING IN SENTENCE**

1. The accused **LAVENDER AOKO OCHIENG** was charged with murder contrary to **section 203** of the **Penal Code**. That charge was substituted with one of manslaughter contrary to **section 202** of the **Penal Code** after a successful Plea Bargaining Agreement.
2. The accused was charged with unlawfully killing Stacy Atieno on the night of 1<sup>st</sup> November 2017 at Baraka Mowlem in Njiru sub-county within Nairobi County.
3. I have considered that Ms Onunga for the prosecution has treated the accused as a first offender having no previous criminal record.
4. Mr. Oduor for the accused, in mitigation on behalf of the accused urged the court to be lenient to the accused as death was due to a fall as the accused disciplined the deceased with slippers. Counsel urged the court to consider the time saved by the court as a result of the accused pleading guilty to the lesser offence. He urged court to grant accused a non-custodial sentence urging that he had spoken to the accused and that she had promised to control her anger next time.
5. I have taken into account all that Mr. Oduor submitted in mitigation.
6. I have taken into account the circumstances of the offence. The facts were that the accused was in the process of beating the deceased with slippers when she fainted.
7. I have looked at the Post Mortem Form P. Exh. I. It shows that the deceased was a child of 6 ½ years. I noted the external findings on the deceased body. It shows that the deceased had three abrasions and one bruise on the frontal region of the scalp. There were also bruises and abrasions of different ages on the occipital region of the scalp. Also present were healed scars on the left scapular region and the right knee most likely inflicted with a finger nail.
8. The internal findings on the body was a subgaleal hematoma on the right occipital region extending to the right parietal region. There was also a skull fracture on the right occipital region extended to the base of the skull. Further findings were a brain laceration on the right occipital and parietal regions and intercranial haemorrhage and subcranial haemorrhage with raised intracranial pressure.
9. The pathologist formed the opinion that the cause of death was severe head injury secondary to blunt object trauma.
10. The post mortem finding portrays a picture of a child who was under constant assault. There is evidence of old injuries inflicted by finger nails. The bruises and abrasions of different ages on the back of the head and abrasions (scratches, cuts) on the scalp. This was a child under constant torture.
11. The facts of the case claim that 400/= was lost and it was the reason the child was being beaten.

Considering the child was only 6 ½ years old, and her alleged wrong one wonders what the point the accused was trying to make. And to imagine this was a brother's child, it beats any logic to take the course of action that the accused did in this case.

12. It is my view that a non-custodial sentence cannot be considered in the circumstances of this case.

13. The court sentences the accused to an imprisonment term of five years.

**DATED AT NAIROBI THIS 20<sup>TH</sup> DAY OF DECEMBER, 2017.**

**LESIIT, J**

**JUDGE**