



**REPUBLIC OF KENYA**  
**HIGH COURT AT NAIROBI**  
**CRIMINAL CASE NO. 100 OF 2015**  
**REPUBLIC.....PROSECUTOR**  
**V E R S U S**  
**V V V K..... ACCUSED**

**RULING IN SENTENCE**

1. The accused was initially charged with murder contrary to **section 203** as read with **section 204** of the **Penal Code**. After a successful Plea Bargain the offence was reduced to manslaughter contrary to **Section 202** of the **Penal Code**.
2. I have considered that the accused pleaded guilty to the lesser charge of manslaughter and has therefore saved the court precious time.
3. I took into account that the accused was in custody from date of arraignment in court on 3<sup>rd</sup> November, 2015 until 19<sup>th</sup> November, 2015 when she was released on bond.
4. I have considered that the prosecution has treated the accused as a first offender.
5. Mr. Saenyi for the accused pleaded with the court in mitigation to give the accused a non-custodial sentence taking into account that she is 19 years of age and that at the time of the offence she was 17 years old. Counsel urged that accused was living with a man but had gone back home after a disagreement.
6. He urged that when the accused returned to her boyfriend upon his invitation is when she was confronted by the deceased. Counsel urged that the accused was unaware of the relationship between deceased and her boyfriend and that she acted in self-defence during the incident.
7. I have considered that accused has 2 children aged 3 years and 11 months who solely depend on her. I have also considered that accused's mother also depends on her.
8. I called for a Pre-Sentence Report which has now been file. The Probation Officer who prepared it. Mr. Otukho has expressed reservations concerning giving accused a non-custodial sentence urging that she is predisposed to crime commission and was likely to re-offend.
9. The family of the accused were interviewed, in particular the mother. Her anxiety over her daughter is clear from her responses that she did not know what will the accused does in the night which is the time she leaves for work.

10. The family of the deceased is not happy about the possibility of the accused being given a non-custodial sentence. That could be informed may be by the pain they are feeling for the death of their kin in the circumstances that prevailed in this case.

11. It could also mean that they are unaware of the provisions of the law specifically **section 190(1)** of the **Children Act** which stipulates:

**“No child shall be ordered to imprisonment or to be placed in a detention camp.”**

12. **Section 1** of the same **Act** defines a child as “means any human being under the age of 18 years.”

13. At the time the accused was arraigned in court in November 2015, her age was assessed by a doctor to be 17 years old. Age is taken into account not as at the date of sentence but as at the date the offence was committed. The court is bound by the law to give a non-custodial sentence in this case.

14. I have called for a vacancy for placement of the accused in a probation hostel and one has been found. I found it necessary to place the accused initially at a Probation Hostel for closer supervision. This was found necessary as I have noted that part of the time when this case came up, the accused came to court reeking of alcohol.

15. I order as follows in terms of sentence:

**a) Accused will serve 3 years’ Probation the first year of which shall be served in [particulars withheld] Girls Probation Hostel and the balance of it from a place the Probation Officer supervising her will find best suited.**

**b) During this period of Probation the accused should be of good behavior, must stop alcohol abuse and keep company with persons of good reputation.**

**c) The accused should adhere to all conditions and instructions set by the supervising Probation Officer.**

**d) The Probation shall organize Guidance, Counselling and Anger Management training which the accused must dutifully attend.**

**e) The Probation Depart should also organize life Skills Training for the accused to enable her swift re-integration into the society and aid in self-dependence.**

16) If the accused breaches any of the conditions I have set herein above she will be brought back to his court for an alternative sentence to be imposed.

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

**LESIT, J**

**JUDGE**