



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO.138 OF 2012

REPUBLIC -

PROSECUTOR

VERSUS

EVERLINE NYABOKE MBUYA - ACCUSED

SENTENCE

1. The accused herein **EVERLINE NYABOKE KENGURU** was initially charged with the offence of **Murder contrary to Section 203** as read with **Section 204 of the Penal Code**.
2. By a plea bargain agreement made between the accused on 14th July 2015, the said charge was reduced to a lesser charge of **Manslaughter contrary to Section 202** as read with **Section 205 of the Penal Code**.
3. The particulars of the offence are that on 24th October 2012, at Bomakombi Sub-location in Kisii South District within Kisii County, unlawfully caused the death of **RUTH KERUBO**. The accused was convicted on the lesser charge of Manslaughter on her own plea of guilty.
4. The accused and the deceased were mother and daughter respectively.
5. The facts of the case were that on **24th October 2012** at about 6.00 a.m. the accused went to home of one **WILFRIDA BIYAKI** while carrying the baby (deceased) who was at the time aged about 1 year 3 months. Upon the said **WILFRIDA BIYAKI** checking on the baby, she discovered that she was lifeless/dead and on enquiring from the accused what could have happened to the baby, the accused, who appeared drunk stated that she could have accidentally slept on the baby. A post mortem report determined the cause of death to be asphyxia.
6. In mitigation, Mr. Sagwe for the accused submitted that she was remorseful as the baby died accidentally due to the accused's drunkenness.
7. Mr. Sagwe added that the accused had 3 other young children to take care of and prayed for non-custodial sentence.
8. The Probation Officer's pre-sentencing and victim impact assessment report filed in court on 6th November 2015 recommended a non-custodial sentence for the accused while noting that she was a first offender and her family and community at large had forgiven her.
9. I have taken into account the unfortunate and very disturbing circumstance that led to the death of an innocent baby. The accused is a young mother and a first offender. She has been in custody

for over 3 years while awaiting her trial and she pleaded guilty to a lesser charge of manslaughter.
10. I am certain that the 3 year stint that the accused has had in custody while awaiting her trial serves as adequate lesson to her to keep off alcohol and be a more responsible parent.

11. Accordingly, I sentence the accused to 3 months Community Service during which period she will be supervised by the Probation Officer of her area.

12. It is so ordered.

Dated, signed and delivered in open court this 22nd day of January 2016

HON. W. OKWANY

JUDGE

In the presence of:

- Miss. Mochama for the State
- Mr. Sagwe for Accused
- Mr. Omwoyo: court clerk