



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 9 OF 2016

REPUBLIC.....PROSECUTOR

VERSUS

CLARE MORAA OBIERO.....ACCUSED

SENTENCE

1. The accused herein, **CLARE MORAA OBIERO**, was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. The murder charge was however reduced to a lesser charge of manslaughter on 30th June 2016 following a plea bargain agreement signed by the accused and the state.
2. The particulars of the offence were that on 20th February 2016 at Nyosia village in Kisii Central District within Kisii County unlawfully caused the death of **MARK OBIERO**.
3. The accused pleaded guilty to the lesser charge of manslaughter and was consequently convicted on her own plea of guilty. The facts of the case, as narrated by Mr. Otieno counsel for the state, were that the deceased was the infant son of the accused and that on the material, the accused left her parents home together with the infant only for the accused to be seen the following day without the child. The accused gave different conflicting reasons for the absence of the child only for the child's decomposing body to be found in River Gucha.
4. The cause of death was established to be asphyxia secondary to drowning.
5. In mitigation, Mr. Okenye for the accused submitted that she was a minor aged 17 years, she was remorseful and pleaded for leniency. The court then called for Probation Officers pre-sentencing report to enable it arrive at the most appropriate sentence.
6. On 15th July 2015, the court received a letter from the manager of Manga Children's Home, where the accused was remanded pending her trial, to the effect that she was pregnant and therefore could no longer be accommodated at the same facility. The manager of the said Children's Home sought the transfer of the accused to another facility.
7. The Probation Officer's presentencing report favours a non-custodial sentence for the accused bearing in mind the fact that she is a minor and that she is currently pregnant with another child.
8. I have considered the very disturbing circumstances that led to the death of the deceased (infant) in the hands of his own mother who had no qualms about tossing him into the raging river without second thoughts and thereafter moving on with her life and giving misleading information about the child's

whereabouts. The accused's tender age cannot be an excuse for her to commit such a heinous and senseless crime

9. A look at the circumstances surrounding this case shows that there is a total breakdown in societal material and social support system to young mothers who find themselves in the same position as the accused herein. Parents turning against their own children has been found by psychologists, to be an ultimate expression of emotional disorder. The social support systems where families were linked together and supported each other are no longer the norm, which makes this court to wonder what will happen to the child that the accused is currently carrying since she is reported to be pregnant. How safe will this child be in the hands of her own mother who has already been convicted of killing another baby?

10. These are the questions that this court is grappling with especially in the face of the Probation Officer's report that she could benefit from a non-custodial sentence.

11. To my mind, the accused is a young girl and indeed a minor who still needs the care and protection of her parents, family and the society at large.

12. I will take the cue from the Probation Officer's recommendation that the accused be given a non-custodial sentence.

13. I therefore sentence the accused herein CLARE MORAA OBIERO, to 2 years probation during which period she will be closely monitored and supervised by the Probation Officer of her area.

Delivered, dated and signed in at Kisii on 27th of July, 2016.

W.A. OKWANY

JUDGE

In the presence of:

- Mr. Otieno for the State
- Mr. Okenye for the Accused
- Omwoyo court clerk