



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL CASE NO. 115 OF 2013

REPUBLIC.....PROSECUTOR

VERSUS

B B K.....ACCUSED

SENTENCE

1. The accused person herein **B B K** was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. Following a plea bargain agreement dated 3rd May 2016, the charge was reduced to a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.
2. The particulars of the charge were that on the night of 4th October, 2013 at [Particulars withheld] village in Kisii Central District within Kisii County unlawfully caused the death of **E B**. The accused was convicted of the offence of manslaughter on his own plea of guilty.
3. The facts of the case were that on 4th October 2013, the accused assaulted the deceased, then a young baby aged 2½ years as his wife L N was preparing dinner for the family. Upon finishing cooking dinner, the accused's wife discovered that the baby, E B, lay dead on the bed after the accused, who was all along with the baby had run away.
4. The postmortem examination on the body of the deceased stated that the cause of death was severe haemorrhage due to the blunt force trauma to the abdomen following assault.
5. In mitigation, Mr. Okemwa advocate for the accused submitted that the accused was very remorseful about the unfortunate death of his own child. Mr. Okemwa added that the accused was married with one other child and that he was the sole –bread winner of his young family.
6. The Probation Officer's Pre- sentencing report filed on 23rd May, 2016 recommended a non-custodial sentence for the accused so that he could be rehabilitated through probation services of guidance and counseling. The Probation Officer noted that the accused was drunk at the time he committed the offence but had now sobered up and deeply regretted his actions.
7. I have taken note of the very disturbing circumstances that led to the death of an innocent baby aged only 2½ years. The accused had no qualms about inflicting deadly blows on a defenseless baby and should not expect to get the sympathy of this court by claiming that he was drunk when he committed the offence. This court cannot comprehend what could have prompted the accused to act in such a callous and uncaring manner towards a baby whom he willingly took away from the mother as she was preparing dinner for the family.

8. Even though the Probation Officer has recommended a non-custodial sentence, this court is still of the view that a custodial sentence would be more appropriate in this case.

9. It is the above reasons that I hereby sentence the accused to serve 10 years imprisonment.

Delivered, dated and signed in at Kisii on **20th** of **July**, 2016.

W.A. OKWANY

JUDGE

In the presence of:

- Mbelete for the State
- N/A for the Accused
- Omwoyo court clerk