



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII

MURDER NO. 31 OF 2012

BETWEEN

COLLETA KWAMBOKA..... ACCUSED

AND

REPUBLIC PROSECUTOR

SENTENCE

1. The accused Colleta Kwamboka Isena was initially charged with the offence of murder the particulars of which were that on 8th February 2012 at Omobiri village of Masaba District within Kisii County in the Republic of Kenya murdered Duncan Osoro Isena.
2. She pleaded guilty but a plea of not guilty was recorded to the same upon stating that she did not intend to kill the deceased.
3. On 9/3/2015 a plea bargain agreement was entered into between the advocate for the accused and the state whereby the charge was reduced to manslaughter and upon the facts being presented the accused pleaded guilty and was therefore convicted on her own plea of guilty.
4. In mitigation Mr. Nyagaka advocate submitted that the accused was a young girl aged 25 years who had been in custody for the last three (3) years and therefore that was enough punishment. He therefore pleaded with court to give the accused a none custodial sentence.
5. The court therefore ordered for a presentencing report which for reasons not known to this court had not been made available as at the time of passing this sentence and therefore did not have the advantage of the background analysis of the accused.
6. The sold facts leading to the commission of this offence are as follows:-

“On the evening of 8th February 2012 at around 6.00p.m. At Nyanturago village the accused was at home with her mother one Gladys Mokeira together with the accused 13 months old son the deceased when an argument ensued between the accused and her mother Gladys as to the upkeep of the accused's son the deceased. In the heat of argument the accused was ordered by her mother to take her 13 months old son to his biological father or move out of her home. The accused immediately carried her son and left in a hurry to an unknown destination. Two weeks later the partially decomposed body of the 13 months old infant was discovered in a neighbours pond.”

7. With these facts in mind what would be an appropriate sentence to the accused herein? The accused person aged 25 years old was first abandoned by the biological father of the deceased and for 13 months she had found support and comfort from her mother who on 8th February 2012 took the wind out of her sail by first demanding upkeep which had not been available for the past 13 months and as if that was not bad enough ordering her to take the child (deceased) to his biological father who seems to have become “*mteja*.”

8. Was the accused in a state of mind to take a criminal responsibility for her action? Prophet Isaiah in Isaiah 49:15 asked this question:-

“can a woman forget her sucking child, that she should not have compassion on the son of her womb.”

9. To my mind the accused was not in a state to take responsibility for action. It is the society which had failed her and to punish her for the action caused by failure in our social fabric would be a miscarriage of justice. This death of her son which has left the accused degraded humiliated and the resultant scar thereof which will take long to heal is enough punishment to the accused taking into account that she has been in custody for three (3) years.

10. However being a young girl who is likely to fall in “*love*” again and taking into account the need for her to be wise the next time around, I would sentence her to a probation period of one (1) year under the supervision of the probation officer in charge of her sub county who would be able to counsel her and offer rehabilitation and guidance service to enable her in future identify and detect a “*mteja*” if another comes along in future.

Delivered, signed and dated at Kisii this 18th day of June 2015.

J. WAKIAGA

JUDGE

In the presence of:

No appearance by Mr. Nyakaka advocate for the accused.

Mr. Majale advocate for the state.