



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE MURDER NO. 101 OF 2011

BETWEEN

BENARD ATERO NYABWANGA ACCUSED

AND

REPUBLIC RESPONDENT

SENTENCE

1. The accused person was charged with the offence of murder contrary to Section 203 as read with Section 204 of the penal code, the particulars of which were that on 31/10/2011 at Tabaka sub-location in Gucha District within Kisii County murdered SAMUEL ONDIEKI. He pleaded not guilty and by a plea agreement entered into between the state and the accused the said charges were reduced to the lesser offence of manslaughter to which the accused pleaded guilty.
2. The facts leading to the commission of the offence herein were that on 31/10/2011 at around 7p.m. the accused's wife of one year one Ednah Monyangi Marita was at home with her three children, the youngest being the deceased aged six months, when the accused arrived home drunk and stated chasing everyone out of the home, his said wife and two children fled to the accused mothers house leaving behind the six month old infant.
3. While at her mother in law's house the accused wife heard the infant crying and when she rushed back to find out what was happening she found the accused cutting the neck of the deceased baby using a panga which was later recovered at the scene. The accused person immediately escaped and handed over himself to the officers at Nyachenge Ap camp.
4. In Mitigation the accused through his advocate Mr. Mogire submitted that the same committed the offence under influence of alcohol and stated further that the same was aged 33 years at the prime of his life who should be given non-custodial sentence.
5. To assist the court in passing an appropriate sentence I ordered for a presentence report in which it has been recommended that the accused be given non-custodial sentence since he is the only son of his mother left and that the mother of the victim his wife of one year deserted the home immediately after the death of the deceased and her whereabouts is unknown.
6. I have looked at the circumstances of this case and note that the victim was not a biological child of the accused but by marrying the mother the accused is presumed to had taken full responsibility for the same and should have accorded him the necessary protection and love which he failed to so do.
7. Whereas it is alleged that the accused was under the influence of alcohol, the action of the accused

shows that he wanted the mother of the child as a wife without the child thereby leading to the death of the same.

8. Taking into account the fact that the accused has been in custody for almost four years now, I am of the considered opinion that the same has been punished enough for his action, however in view of his conduct of cutting the neck of an innocent child while he had the option of leaving and or not marrying the mother of the deceased, still calls for the needs to undergo some form of rehabilitation the cleansing ceremony planned for by the family notwithstanding.

9. I would therefore sentence the accused to a probation period of two years under the supervision of the probation officer in charge of Gucha sub-county. The accused shall therefore be released from custody and placed on probation forthwith.

Delivered, signed and dated at Kisii this 30th day of July 2015.

J. WAKIAGA

JUDGE

In the presence of:

Mr. Okenye Mogire advocate for the accused.

Miss Boyon advocate for the state.