



REPUBLIC OF KENYA
IN THE HIGH OF KENYA AT MACHAKOS

CRIMINAL CASE 70 OF 2011

REPUBLIC

VERSUS

JOSEPH MUSEMBI NZUKI ACCUSED

SENTENCE

I have considered the circumstances of the offence and the mitigation of the accused, as well as the Probation Officer’s report dated 25th July 2012.

The accused is the father of the deceased who was a child aged 3 years. The accused had sent his child (the deceased) to bring him some food, and the deceased declined. He hit the deceased once with a stick on the head and the deceased collapsed and died. The cause of death was head injury caused by blunt trauma and features of battering.

The Probation Officer recommends that that the accused be put on non-custodial form of sentence. The accused is a first offender.

Though the Probation Officer recommends a non-custodial sentence, however, in my view such a sentence is not appropriate in the circumstances of this case. The deceased was relatively young when he was killed by his father. The father (who is the accused) is the protector of the child. He abused his position because of excessive alcohol consumption. He hit the deceased on the head, with what can, by all accounts, be called a vicious blow with a stick. It was not mere discipline. It went beyond discipline. It was irresponsible. An innocent young life has been lost by the action of the very protector of that life. It cannot be said for certainty that the same accused will take good care of his other children due to his alcohol drinking habits.

Having considered the circumstances of the case, the mitigation of the accused, the Probation Officer’s Report, and the fact that the accused has been in custody since November 2011, I sentence him to serve six (6) years imprisonment. Right of appeal 14 days explained.

Dated and delivered this 27th day of July 2012.

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George Dulu

Judge

In the presence of:

Court clerk – Nyalo

Counsel for State – Mr Mwenda

Counsel for Accused – Mutinda Kimeu present

Accused present