



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KERICHO
CRIMINAL CASE NO. 17 OF 2009**

REPUBLIC

..... **PROSECUTOR**

VERSUS

ROSE ATIENO OTIENO

.....

ACCUSED

SENTENCE

The accused, Rose Atieno Otieno, pleaded guilty to and was convicted of the offence of Manslaughter on 28th July, 2010. Manslaughter is a felony under **Section 202** as read with **Section 205** of the Penal Code. It is defined as the doing of an act or omission that unlawfully causes the death of another person.

The particulars of the offence of manslaughter were that the accused hit the deceased, Lois Akoth, her own daughter, on the head with a piece of wood as a result of which she suffered injury that turned fatal. The deceased was aged 18 years. The accused picked a quarrel with the deceased with whom she had frequently quarreled. The deceased had had a baby boy 3 years before and lived with the accused who was unhappy with her ostensibly because she feared that the deceased might conceive again.

On 16th March, 2009, the Accused locked the deceased in the house and began beating her up. It is then that she inflicted the fatal blow.

The accused was charged with the offence of murder initially which was reduced to manslaughter.

In mitigation, the accused through her advocate, Mr. Motanya, pleaded that she had been in custody for one year and that she is remorseful. She is aged 34 years. She is married with three children who are teenagers. Mr. Motanya told the court in mitigation that the accused was trying to discipline the deceased but did not intend to kill her. She is a first offender.

I have given due consideration to the mitigation and the circumstances in which the offence was committed. It is regrettable that the accused saw as a panacea the thrashing of the deceased to stop her from bringing home babies born out of wedlock and thus increasing the accused's economic burden of raising the family. Educating her as to the need to take precautions was what she should have done. She seems to have been under great pressure which found expression in her frequent quarrels with and beatings of the deceased. It is likely that the death of the deceased, her own daughter, will gnaw her conscience for the rest of her life. It is also likely to have adversely affected the family especially the deceased's siblings. The deceased needs to pay for her crime. But will a long custodial sentence be the most appropriate?

After weighing one thing with another, and having considered the mitigation and all the circumstances of the case, I have come to the conclusion that the court would be sending a bad message if, in manslaughter cases where the acts or omissions resulting in a victim's death are not accidental but rather wanton and

deliberate, albeit not coupled with intent to kill, the court were to fail to mete out a sentence that is commensurate to the gravity of the offence. Human life is precious and sentences must reflect the preciousness. I consider a sentence of 3 years appropriate.

The accused is sentenced to three years imprisonment.

DATED at **KERICHO** this 1st day of November, 2010

G.B.M. KARIUKI,sc
RESIDENT JUDGE

COUNSEL APPEARING

Mr. P. Kiprop State Counsel for the Republic

Mr. Motanya for the accused