



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

HCCRC NO. 42 OF 2019

REPUBLIC.....PROSECUTOR

VERSUS

RASHID ABDI MMEYWA.....ACCUSED

NOTES ON SENTENCING

The Accused, **RASHID ABDI MMEYWA**, was convicted for the offence of **Manslaughter** contrary to **Section 202** as read with **Section 205** of the **Penal Code**. The said conviction was founded upon the accused's plea of guilty.

1. In mitigation, the Accused said that he was very remorseful.
2. He told the Court that he was the sole bread-winner for his family which is comprised of his wife and their children.
3. He also single-handedly takes care of his single mother.
4. The Accused reminded the Court that he had been in a relationship with the deceased, and that the said relationship yielded a child. If he was given the chance, the accused would wish to look after the child.
5. In his opinion, the incident would not have taken place if the deceased had not provoked him.
6. But the learned prosecution counsel, Ms M. Odumba, was of the view that the accused did not deserve a non-custodial sentence at all.
7. She pointed out that the offence was committed when the accused was unleashing gender-based violence against the deceased.
8. The prosecution pointed out the irony in the request by the accused, that he would wish to look after the child whom he had fathered with the deceased, yet the knowledge that the deceased was the mother of his child did not stop the accused from killing the deceased.
9. The Court was reminded that **Manslaughter** was an offence which attracts punishment which extends up to Life Imprisonment.
10. I have given due consideration to the mitigation. I have also taken into account the circumstances in which the offence was committed.
11. The deceased was together with the accused, in their house. Also with them, inside the house, was their child who was 11 months old.
12. After the accused had strangled the deceased, to death, he abandoned her lifeless body on the bed.
13. The Accused left the baby inside the same house where the body was.
14. Meanwhile, he carried away some items belonging to the deceased.
15. Although the deceased had introduced the accused to her friends, colleagues and neighbours, as her husband and as the father of their daughter, he killed her and then travelled to Ruiru, where he lived with his wife, Mary Atieno Obiero.

16. Luckily, the body was discovered after 2 days, because the teachers who were colleagues of the deceased, were caring enough, to check upon her after she failed to report to work. The deceased was a teacher at Ulalo Primary School, in Maseno.

17. I shudder to think what would have happened to the 11 months' old child, if the colleagues of the deceased had not taken steps quickly enough: Most probably, even the child whom the accused says that he would like to look after, would have died!

18. In my considered opinion, the circumstances in which the offence was committed, show the callous nature of the accused. His conduct, after committing the crime, does not reflect remorse.

19. After the Court had given the accused an opportunity for mitigation, I called for a Pre-sentencing Report from the Probation and After Care Service.

20. Regrettably, there was a delay in putting together any report; and that prompted the Court to inquire from the accused whether he would wish to wait for the report or if he was alright if the Court handed down the sentence without the benefit of the report.

21. The Probation Officer informed the Court that both the accused (and his advocate) and the prosecution intimated that the Court should proceed with the process of sentencing notwithstanding the absence of the pre-sentencing report.

22. I have given due consideration to all relevant factors outlined above, and I now sentence the Accused to **TEN (10) Years** Imprisonment.

DATED, SIGNED AND DELIVERED AT KISUMU

THIS 21ST DAY OF JULY 2021

FRED A. OCHIENG

JUDGE