



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**CRIMINAL CASE NO. 15 OF 2018**

**(CORAM: R. E. ABURILI - J.)**

**BETWEEN**

**STATE.....PROSECUTION**

**VERSUS**

**GAO.....ACCUSED**

**RULING ON SENTENCE**

1. On 6/5/2020 I delivered a judgment where I found and held that the accused person **GAO** was guilty of the offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. I convicted her accordingly.
2. The accused and her counsel Mr. Oduol mitigated after which I ordered for a probation report. I have considered the accused person's mitigation and report filed by Mr. David Odumba, Probation Officer, and Siaya on 8/5/2020.
3. The report paints the accused person as a respectful person, God fearing and a widow who has 3 children who depend on her. One is working as a teacher.
4. The accused is a 49 year old ECD teacher. She is a widow who is also said to be HIV positive. She is a reliable and responsible member of the society save for this offence for which she has been convicted. She was the child's caretaker at the time that he vanished and he was found drowned. She has since lost her job as a result of the said negligence.
5. She is a first offender. She regrets the incident leading to the death of the deceased victim who was a special child.
6. As stated in my judgment, teachers are in *loco parentis* of the children under their care. It is expected that they are careful when handling children under their custody and especially children with special needs.
7. In this case, it is clear that the accused was reckless and careless in handling the special child who was blind. She failed to exercise diligence and due care and attention by failing to hand over the child to his dorm mother. Article 26 of the Constitution is clear that every person has a right to life and no person shall be deprived of their life except in the manner prescribed by the Constitution or under written law. The special child FO did not deserve to die from carelessness of the accused.
8. The accused is remorseful and prays for leniency and accepts her mistake of being careless leading to a precious life. The Probation Officer recommends probation for the offender.
9. Having considered all the above, I hereby sentence the accused person **GAO to serve Four years on probation**, to be closely supervised by the Probation Officer, Siaya and to be guided and counselled on how to be careful about lives in future. She shall abide by the probationary terms, in breach of any of the terms of probation, the accused person shall be brought before this court to be sentenced to a custodial term as the court shall deem it fit and just.

**10. Orders accordingly.**

**Dated, signed and Delivered at Siaya, this 11<sup>th</sup> Day of May, 2020. Via skype**

**R.E. ABURILI**

**JUDGE**