



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAJIADO

CRIMINAL CASE NO 23 OF 2018

REPUBLIC.....PROSECUTOR

-VERSUS-

CK.....1ST ACCUSED

DR.....2ND ACCUSED

SENTENCING

1. **CK** and **DR** were initially charged with the offence of murder contrary to section 203 as read with section 204 of the penal code. Particulars were that on the 10th day of November 2018 in Isinya Sub County within Kajiado County, they murdered **AAK**.
2. Later on the accused, their advocates and the prosecution entered into plea bargain negotiations allowed under section 137A of the Criminal Procedure Code and reached an agreement for the accused to plead to a lesser charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code.
3. The court examined the agreement and explained to the accused persons the meaning of that agreement and, how it affects their rights if they entered into the agreement and if they did not. After being satisfied that they had entered into the plea agreement voluntarily, the court allowed them to plead, they pleaded guilty and were convicted for the offence of manslaughter on their own plea and therefore this sentencing.
4. The 1st accused was entrusted as the guardian of the deceased after the deceased's mother had passed on and her father ran away leaving the minor alone.
5. On 10th November 2017, the 2nd accused left the 1st accused and the deceased at home and went to work. At about 9am neighbours heard the deceased cry from beatings by the 1st accused. The deceased then left the house to dump rubbish in the dust bin. She was seen bleeding. Later in the afternoon of the same day, neighbours again heard the deceased being beaten for not doing her homework well. When cries stopped, neighbours heard the 1st accused calling the deceased without response. The 2nd accused returned from work at about 3pm and found the child dead.
6. The two accused persons planned how to secretly dispose of the body. They agreed to transport the body in a suit case to the rural home for burial in Kakamega County. On 11th November 2018, with the help of a boda boda, rider, the 1st accused took the body to Kitengela stage where she boarded a vehicle and took the body for burial. The cause of death was said to be due to a fall from a tree.
7. Later investigations were conducted when the cause of death was doubted; an order was obtained from Mumias Law Courts for exhumation of the body and after a post mortem, it revealed that the deceased died from circulatory collapse due to extensive soft tissue blunt force trauma following assault. The two accused were arrested and charged.
8. The accused are a couple, a husband and wife. The 1st accused is an aunt to the deceased. She had been given the responsibility to bring up the deceased who had lost her mother and her father ran away. The deceased was a desperate and needy child whose life was cut short by the 1st defendant's act. The 1st accused betrayed the societal trust that had been bestowed on her to assist the deceased grow up as a normal child with parental support.
9. From the facts of this case, the 1st accused was trying to assist the deceased do her homework but went beyond this and used excessive force to achieve what would have otherwise been a noble cause. It caused the death of an innocent child.
10. The 2nd accused failed to disclose the fact that the child had died and report the matter to the police for proper investigation and possible action. He assisted the 1st accuse, his wife, to conceal the death and had the body secretly transport and buried.

11. Mitigating on behalf of the accused, Mr. Nzaku told the court that the accused are remorseful and had reached out the deceased's family and reconciled. He told the court that at the time of the offence, the 1st accused was expectant and may have experienced hormonal imbalance that may have affected her sense of reasoning and responsibility. She now has a young child delivered after the incident. Counsel pleaded with the court for a non-custodial sentence for both accused. He argued that a long custodial sentence would put them in difficulty. Mr. Meroka for the state told the court that the two are first offenders and left the issue of sentence to court.

12. I have considered the circumstances of this case as well as mitigation. I have also considered the sentence prescribed in section 205 of the Penal Code object of sentencing and authorities on the issue. It is true that the 1st accused has a young child and therefore at the time of the commission of this offence, she must have been expectant.

13. On the other hand, the 2nd accused played no role in the killing of the deceased, except that he assisted the 1st accused conceal the death and had the body secretly transferred and buried at the rural home.

14. Taking into account the circumstances of the case and mitigation, the 1st accused committed the offence trying to assist the deceased better her education. Her intentions were noble but the result was catastrophic though expectant at the time. That notwithstanding, the duty of the court is to administer justice to both sides.

15. Weighing all the options available, to the court, the fact that the 1st accused concealed the offence and secretly transported the body for burial, portrayed her as someone who least cared and her main concern was to conceal the offence at all costs, something she should be punished for. I therefore find that a custodial sentence would be the appropriate sentence for her to learn a thing or two from her actions.

16. Regarding the 2nd accused, I do not find anything aggravating except the fact that he assisted in concealing the offence. He was not present when the child died and therefore did nothing to aid the commission of the offence.

17. Consequently, the 1st accused is hereby sentenced to three years imprisonment. Sentence to run from her date of arrest that is 22nd November 2018. The 2nd accused is hereby sentenced to one year probation.

18. Orders accordingly.

Dated, Signed and Delivered at Kajiado this 6th day of December, 2019.

E. C. MWITA

JUDGE