



**REPUBLIC OF KENYA**

**HIGH COURT AT NAIROBI**

**CRIMINAL CASE NO. 57 OF 2017**

**REPUBLIC.....PROSECUTOR**

**V E R S U S**

**CALEB KYALO.....ACCUSED**

**RULING ON SENTENCE**

1. The accused **CALEB KYALO** was arraigned in court on 21<sup>st</sup> December, 2017 with one count of murder contrary to **section 203** of the **Penal Code**. There was an offer for Plea Bargaining by the defence which was accepted by the defence.
2. A Plea Agreement was reached and the accused pleaded guilty to a lesser charge of manslaughter as read with **Section 202** of the **Penal Code** on the 14<sup>th</sup> November, 2018.
3. I have considered that the accused was in custody awaiting trial since his arraignment in court on 21<sup>st</sup> December 2017 to date, a period of about one year. I have also considered that the accused pleaded guilty to a lesser charge therefore saving the court precious time.
4. I have also considered that the prosecution has produced the previous record of the accused which shows that the accused is a first offender.
5. Mr. Ratemo for the accused gave mitigating facts on behalf of the accused. In his submissions, Counsel urged that the accused did not intend to cause the deceased death but intended to take care of the child. He blamed it on alcoholism. Counsel urged that the accused was 21 years old at the time of the offence. He urged that the accused had four children and a wife. Counsel urged that the wife was pregnant at the time of the incident and has since given birth.
6. Mr. Ratemo submitted that the accused was taking care of the family and urged the court to give him a chance to resume his normal life. Counsel urged that the accused intends to reconcile with his wife and sought a non-custodial sentence.
7. The court called for a pre-sentence report on the accused and one was filed in court on 5<sup>th</sup> December. I noted significant findings in that report. Among the findings by the probation officer was the fact accused named the mother of the deceased at a time she had three children from previous relationships. The deceased in this case was the first child with the wife and since his arrest his wife gave birth to a second child.
8. The Report confirms accused over indulgence with alcohol and miraa. The accused story about the circumstances of the incident is consistent. Although he says he could not re-call taking away the deceased, then only 18 months, from his mother, he admits he caused her death by lying on her in his bed.
9. I have considered the submissions by the defence counsel. I have noted that indeed the accused is remorseful for the offence and takes full responsibility for it.
10. The mother of the accused is concerned about accused habits into alcoholism which reminded her with sorrow of their pitiable and poverty stricken past caused by accused father's excessive indulgence in alcohol.
11. There was a victim impact statement by the material grandfather of the deceased. His was to request compensation for costs incurred during the burial of his grandchild. Ms. Abima was unable to get the mother and wife of deceased and accused respectively.
12. I have taken into account all the factors surrounding this case and the actual circumstances of the offence. It is clear that the accused conduct which led to the death of the deceased was due to indulgence in alcohol. It is true he acknowledges this weakness and is remorseful that it led to deceased death. He is a young man in his twenties. I think that to let him off on a non-custodial sentence only after one year's incarceration may not be beneficial to him.

13. The accused needs to break that habit of indulgence in alcohol and also needs time to come to a realization of the importance of breaking free from alcohol.

14. I find that accused will benefit from “*a short sharp*” sentence in all the circumstances of the case. In the circumstances, I will sentence the accused to four years imprisonment to run from 21<sup>st</sup> December, 2017 when he was first arraigned in court with the charge of murder.

**DATED AT NAIROBI THIS 13<sup>th</sup> DAY OF DECEMBER, 2018.**

**LESIT, J**

**JUDGE**