



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT KISII**

**CRIMINAL CASE NO.07 OF 2013**

**REPUBLIC.....PROSECUTOR**

**VERSUS**

**M N M.....ACCUSED**

**SENTENCE**

1. The accused herein, **MNM** was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. By a plea bargain agreement made between the state and the accused on 9<sup>th</sup> November 2016, the charge of murder was reduced to a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.
2. The particulars of the offence were that on 16<sup>th</sup> January 2013 at in Gucha District within Kisii County the accused unlawfully caused the death of **DON**. The accused pleaded guilty to a lesser charge of manslaughter and was consequently convicted on her own plea of guilty.
3. The facts of the case, as narrated by Miss Mbelete, counsel for the state were that on 15<sup>th</sup> January 2013, the accused differed with her brother one SN, who was the father of the deceased herein DO, then aged 4 years and the differences ended in a physical confrontation in which the accused was injured. On the following day, 16<sup>th</sup> January 2013, the said SN left the deceased under the care of the accused. The accused went with the deceased to fetch water in a nearby well only for her to return home without the child whose body was found floating in the said well on the following day 17<sup>th</sup> January 2013.
4. A post mortem examination on the body of the deceased determined the cause of death to be cardiac pulmonary arrest secondary to strangulation. The body had bruises on the upper and lower limbs and the baby's lower lip was also bitten.
5. In mitigation Mr. Anyona, advocate for the accused submitted that she was a first offender, was remorseful and pleaded for a non-custodial sentence.
6. The Probation Officer's report filed in court on 20<sup>th</sup> March 2017 recommends a non-custodial sentence for the accused while observing that the accused and the father of the deceased were members of the same family and that they had reconciled and come to terms with the death of the deceased-minor. The Probation Officer observed that the accused is suicidal and at one time even attempted to kill one of her own children. It was also noted in the Probation Officer's report that the accused suffers from HIV/AIDS and has young children to whom she is a single parent.

7. I have considered the circumstances that led to the brutal killing of a young baby aged only 4 years. The deceased died in the hands of his aunt in whose care and custody he had been left by his father.

8. From the results of the post mortem examination, it is clear that the cause of death was cardio pulmonary arrest secondary to strangulation which shows that the child was strangled before his body was dumped into the well. The accused cannot justify her extreme cruelty and bizarre behavior towards the child by claiming that she had differed with the child's father. It would appear that the accused viciously attacked and killed the deceased to revenge against her brother following a fight that they had the previous day. The accused showed no mercy to a young innocent baby and should not expect any sympathy from this court.

9. After taking into account all the circumstances surrounding the case the accused's mitigation, the Probation Officer's Report and the fact that the accused has been in custody since January 2013, I am still convinced that a custodial sentence will be appropriate in this case.

10. Consequently I hereby sentence the accused to 7 years imprisonment which sentence period shall begin to run from the date when the accused first appeared in court being 18<sup>th</sup> January 2013.

**Dated, signed and delivered in open court this 20<sup>th</sup> day of March, 2017**

**HON. W. OKWANY**

**JUDGE**

**In the presence of:**

- Miss Ouko for the State
- Mr. Anyona for the accused
- Omwoyo -court clerk