



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NANYUKI
CRIMINAL CASE NO. 4 OF 2015

REPUBLICAPPELLANT

versus

H M G.....RESPONDENT

SENTENCING

1. **H M G (H)** is before court today for sentencing following his conviction on 29th March, 2017 for the **offence of Manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code.**
2. H was the father of the deceased **C K M.** The prosecution's evidence was that **on 16th March, 2013** H beat the deceased. The deceased lost consciousness due to that assault. H threw water on him but he did not regain consciousness. The deceased later died.
3. H was charged with murder of the deceased but because the post-mortem report indicated that the cause of death was inhalation of water, the water H threw on the deceased to revive him; H was acquitted of murder but convicted of manslaughter.
4. The evidence adduced by the prosecution showed that H habitually chastised his two young children, amongst whom is the deceased. It is not clear whether H's constant cause of chastisement of the deceased was because he had at one time adapted lifestyle of a street urchin; or that the chastisement was the cause that led the deceased to lead such a lifestyle. There is however no doubt that H was harsh to his children who looked to him for protection and provision. Incidentally he failed in both because he habitually beat his children and also failed to provide for them that they were left to fend for themselves by looking for food in dustbins. His 11 years old daughter **N W** was so afraid by H when she saw him in court that proceedings had to stop to give her time to calm down.
5. The mother of those children, and H's wife, deserted the matrimonial home because of the frequent violence meted to her by H.
6. I shall bear the following principles, set out in the following cases, when sentencing H.

(a) **PUBLIC PROSECUTOR V RAPRAP [2011] VUSC 89** where His Lordship Spear J said:

“This sentence must hold you fully accountable for what you have done; it must denounce your conduct and promote in you a sense for responsibility for your activities...”

(b) **REPUBLIC V THOMAS PATRICK GILBERT CHOLMONDELEY [2009]eKLR**

“Sentencing is central in the administration of criminal justice. It is the process stage in the criminal Procedure at which a court of law of competent jurisdiction makes an order, after convicting an offender as to the specific penalty to be meted out. The severity of a sentence depends on the circumstances of each case. Regard is usually had to the nature of the crime, the offender and the purpose of the sentence.”

(c) **PETER MBUGUA KABUI V REPUBLIC [2016] eKLR**

“Sentence is essentially an exercise of discretion by the trial court.”

7. Learned Counsel Mr Wanjohi for the accused in mitigation stated that H regrets his action which led to the death of his 10 year old son. Counsel submitted that H acknowledged he acted in anger when he chastised the deceased. That as consequence of his action he lost his son and he will have to live with that guilt for the rest of his life. H was said to be remorseful.

8. **Under Section 205 of the Penal Code, Cap 63**, the maximum sentence for a conviction of manslaughter is life imprisonment. Bearing in mind the circumstances of the death of the deceased; and because the society owes a duty to the deceased’s, and children like him; and to ensure that H understands that the brutality he showed his children must be denounced and is disapproved; H is hereby sentenced to serve imprisonment for 6 years. Because H has been in custody now for 4 years **and in accordance to Section 333 of Criminal Procedure code Cap 75 he shall only serve 2 years imprisonment from today.**

DATED AND DELIVERED AT NANYUKI THIS 4th DAY OF APRIL 2017.

MARY KASANGO

JUDGE

CORAM

Before Justice Mary Kasango

Court Assistant: Ndungu

For the State:

Accused: H M G

For Accused:.....

Language:

COURT

Sentencing delivered in open court.

MARY KASANGO

JUDGE