



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL CASE NO. 27 OF 2015

REPUBLIC.....PROSECUTOR

VERSUS

PETER JOSEPH NYAMBANE.....ACCUSED

SENTENCE

1. The accused person herein **PETER JOSEPH NYAMBANE** was initially charged with the offence of murder contrary to **Section 203** as read with **Section 204 of the Penal Code**. Following a plea bargain agreement dated 23rd March, 2016, the said charge was reduced to a lesser charge of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code** and the accused was convicted of the said lesser charge after pleading guilty.
2. The particulars of the charge were that on 14th May, 2015 at Ekemuche village, Bosoti Sub-location in Kenyena Sub County within Kisii County unlawfully caused the death of **FAITH MORAA**.
3. The facts of the case, as narrated by Mr. Otieno state counsel, were that the accused separated from his wife one **PHYLLIS OSEBE** who left 2 minor children including the deceased, then aged 4 years, with the accused. On the material date, being 14th May, 2015, at around 7 p.m., the accused took the deceased with him to his house only for her dead body to be discovered on a sofa inside the house of the deceased. The body of the deceased had injuries on the hands and legs which the accused admitted having inflicted to instill discipline in her.
4. A postmortem examination of the body however revealed that the deceased died due to cardio-respiratory arrest secondary to asphyxia caused by strangulation.
5. In mitigation, Mr. Okemwa for the accused submitted that the accused was remorseful, was a first offender, and a young man with a young family. He pleaded for leniency so that the accused could go back home and take care of his family.
6. The Probation Officer in his report filed on 19th May, 2016 made recommendation for a non-custodial sentence for the accused while observing that the child's death was accidental.
7. I have considered the circumstances surrounding the case, the mitigation tendered by the defence counsel and the recommendations made by the Probation Officer. I note that the cruel and bizarre actions of the accused led to the death of the accused's innocent and defenseless child whom he ought to have protected from any harm or danger in the first place.

8. I do not agree with the Probation Officer's recommendations for a non-custodial sentence taking into account the brutality of the accused towards the child.

9. In view of the above observations and considerations, I come to the conclusion that a custodial sentence would be more appropriate in this case.

10. I therefore sentence the accused to 7 years imprisonment. The sentence shall begin to run with effect from the date of his first court appearance.

Delivered, dated and signed in at Kisii on **2nd** of **June**, 2016.

W.A. OKWANY

JUDGE

In the presence of:

- Otieno for the State
- Mr. Okemwa for the Accused
- Omwoyo court clerk