



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISII
CRIMINAL CASE NO. 1 OF 2016
REPUBLIC.....PROSECUTOR
VERSUS
F G R.....ACCUSED
SENTENCE

[1] On 11th July 2016, F G R, the accused herein, entered into a plea bargain agreement with the state in which the initial charge of murder against her was reduced to that of manslaughter contrary to **Section 202** as read with **Section 205 of the Penal Code**.

[2] The particulars of the offence were that on 4th January 2015 at Teresi village in Kisii Central District within Kisii County in the Republic of Kenya, unlawfully caused the death of B M.

[3] The accused pleaded guilty to the said charge of manslaughter and was accordingly convicted on her own plea of guilty.

[4] The facts of the case were that the accused and the deceased then aged 4 years were mother and son respectively and that on 3rd January 2016, the accused threw the deceased into a borehole following a disagreement with her husband who had refused to accept responsibility for the deceased whom he claimed had been born out of wedlock.

[5] The baby drowned in the borehole and the accused then surrendered herself to the police at Kisii Police station.

[6] The post mortem report which was produced in court as PExhibit I revealed that the deceased had died of asphyxia due to drowning.

[7] In mitigation, Mr. Nyagwencha for the accused submitted that she was a young girl aged 23 years and had dropped out of school due to the pregnancy.

[8] Mr. Nyagwencha added that the accused was remorseful and pleaded for a non-custodial sentence.

[9] The Probation Officer's Social enquiry and pre-sentencing report filed in court on 7th September 2016 recommended that the accused could benefit from probation placement.

[10] I have considered the very disturbing circumstances under which the accused killed her own baby by throwing him into a borehole. I am convinced that the disagreements that the accused may have had with her husband over the baby cannot be an excuse for the heinous crime. The accused had the option of

saving her baby's life by leaving the troubled marriage. The accused threw her baby into the borehole without any hint of maternal love and compassion that she was expected to exhibit towards a child that she willingly brought to this world.

[11] The actions of the accused towards her own child were cruel and she should not expect to benefit from the leniency of this court.

[12] The Probation Officer's report notwithstanding, I am still convinced that the type of offence committed by the accused calls for a custodial sentence.

[13] Consequently, I hereby sentence the accused herein to 5 years imprisonment.

Delivered, dated and signed in at Kisii on 13th of September, 2016.

W.A. OKWANY

JUDGE

In the presence of:

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