

REPUBLIC OF KENYA

IN HIGH COURT OF KENYA AT MERU

HCRA 45 OF 2012

SAMPAULA ATITA GITONGA APPELLANT

VRS

REPUBLIC RESPONDENT

J U D G E M E N T

Sampaula Atita Gitonga was convicted of the offence of manslaughter contrary to Section 204 of the Penal Code on her own plea of guilty by the Senior Principal Magistrate, Tigania, on 4/4/2012. She was sentenced to serve 20 years imprisonment. She has filed an appeal against sentence on grounds that she has six (6) other children who need parental care, she regrets her action and therefore pleads for leniency.

The appeal was opposed by Mr. Mulochi, Learned Counsel for the State who argued that under Section 205, a person convicted of manslaughter is liable to imprisonment for life and that having been handed only 20 years, the court was lenient; that this court should not interfere with the sentence. Under Section 348 of the Criminal Procedure Code, no appeal lies against a conviction where the accused has pleaded guilty and was convicted on his own plea except an appeal will lie in regard to the extent and legality of the sentence.

In this case, the Appellant pleaded guilty to the offence of manslaughter and was sentenced to 20 years imprisonment. The appeal is against the length of the sentence. The reasons that the Appellant gives are that she is a mother of six other children; that she regrets her action as it was in an attempt to discipline the deceased that the death occurred. Having pleaded guilty, the Appellant did not waste the court's time in having to hear the case. This court takes into account the circumstances of the case that out of the beating, the deceased sustained injuries to some vital parts of the body that resulted in death. That notwithstanding, and considering the circumstances of the case cumulatively, I find that the sentence of 20 years is on the higher side. This court called for a Probation Officer's Report which is favourable to her release on probation. This is both from her family and the community. The Appellant was sentenced on 16/4/2012. She has so far served 3 years imprisonment. In my view, this is a case that calls for intervention with the sentence and I hereby do, by setting aside the sentence of 20 years imprisonment and instead sentence her to serve the rest of the sentence on 3 years' probation.

It is so ordered.

DATED, SIGNED AND DELIVERED THIS 8TH DAY OF JUNE, 2015

R. P. V. WENDOH

JUDGE

PRESENT:

Mr. Musyoka for the State

Faith, Court Clerk

Appellant in person

