

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIVASHA**

**HIGH COURT CRIMINAL CASE NO. 15 OF 2019**

REPUBLIC.....

.....PROSECUTOR

VERSUS

JULIUS

OSEMBO

KHASAKHALA...

.....ACCUSED

**JUDGMENT ON SENTENCE**

1. In passing the sentence herein, I have considered the circumstances under which the offence was committed. That the accused is treated as a first offender. The submissions on mitigation that he is remorseful, that he is married with a child aged 8 years and a bread winner of his family. That the offence arose from momentary lapse of judgment and was not premeditated and therefore did not act with

malice aforethought and is an isolated incident. That he turned himself to the authorities as a sign of absence of criminal disposition and genuine acknowledgment of wrong doing. That he cooperated with investigators at the time of arrest and made no attempt to obstruct justice. That he appreciates no sentence can restore the life of the deceased or undo the deceased's family grief and appreciates irreversible nature of the crime and prays for an opportunity of rehabilitation. That he has been in custody since 2019; and prays the court consider the subject period as it meets out a lenient sentence.

2. In addition, the following facts are considered from pre-sentence report; that he has strong extended family ties, that he is 33 years old and has attended school up to standard 8 and failed to proceed on due to financial constraints, that he is physically and

mentally stable although he uses alcohol though in moderation.

3. However, the report reveals that he does not acknowledge commission of the offence. He denies the same arguing that he had no reason to kill a child he had 'adopted'. Despite the denial, he claims to be a secondary victim and the incident a learning experience.
4. The court also notes that the deceased was a young child of two (2) years nine (9) months whose life was cut short brutally. The mother has been affected in every aspect of her life and suffered devastating effect/impact. She had to relocate to avoid stigmatization and labels, changed friends to avoid reminders of the incident. The effect of loss, extensive, emotionally, physically, socially and psychologically affected the victim's family.

5. The community views are that the offence has serious implications for society. That it has not only devastated individuals but fractured relations and support systems. They hope the offender will be punished to serve as an example to other criminals with criminal intentions. The probation officer in final conclusion left court to exercise its discretion in sentencing.
  
6. Finally, the cruel manner in which the deceased met his death, evidence reveals, he was heard crying alone in the house on 17<sup>th</sup> July, 2019 and cried until he kept quiet. All that time the mother was away. The accused knew that, he never attended to the child a two year old left abandoned, locked up and possibly without food. Where is a human heart in that, even the accused's mother who knew the tender years of the child did nothing to assist and proceed to attend

to a grown up, the accused, and gave him food when a two (2) year old child was abandoned without care. How can they now, by any fragment of imagination, state that they are affected by the death of the child. The worst of it all is that the deceased was killed through asphyxia out of tight pressure to the mouth and nose intended act to kill. The child must have experienced tremendous trauma, shock and pain. The offender must be punished in equal measure.

7. I therefore sentence the accused to serve thirty (30) years imprisonment less the years spent in remand.
8. Right of appeal 14 days.

Dated, delivered and signed this 26<sup>th</sup> day of March 2026

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:

Ms. Chepkonga for the State

Mr. Lumasai H/B

Accused present virtually

Ms Hannah: Court Assistant