



**Director of Public Prosecutor v Obwaru alias Caro Okwisa (Criminal Case E046 of 2022) [2024] KEHC 1764 (KLR) (22 February 2024) (Sentence)**

Neutral citation: [2024] KEHC 1764 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL CASE E046 OF 2022  
SC CHIRCHIR, J  
FEBRUARY 22, 2024**

**BETWEEN**

**DIRECTOR OF PUBLIC PROSECUTOR ..... REPUBLIC**

**AND**

**HAZEL CAROLINE OBWARU ALIAS CARO OKWISA ..... ACCUSED**

**SENTENCE**

1. The accused herein was initially charged with the offence of murder which was reduced to manslaughter pursuant to a plea bargain with the state. She pleaded guilty to the charge and was convicted on her own plea.
2. In mitigation, the accused filed written submissions. It is her submission that she is a first offender; that she has pleaded guilty at the earliest opportunity and she has cooperated with the police and the prosecution.
3. It is further submitted that she was a victim of teenage pregnancy and gender-based violence; that she committed the offence out of fear of having no where to go it she kept the child, since her husband had indicated that he did not want the child and that she had poor family support. It is finally submitted that she is remorseful and that she deserved a chance to take care of the remaining child who is now 7 months.
4. On the part of the state, the prosecution urged the court to consider the circumstances of the offence. It is pointed out that tee Accused had earlier attempted to kill the deceased by throwing him in a river, but the child was rescued by the Accused’s sister-in-law. This was therefore a second attempt in which she succeeded.
5. The prosecution further points out that this time round, she threw the child in the pit- latrine; she lied about the child’s where abouts and when she was arrested she was going- on with her life as she was busy braiding someone’s hair. The prosecution argues that she, killed the child out of social pressure



and it follows that the safety of the 7 – months old child, whom she currently has, and who was born while the Accused has been in remand , is not guaranteed.

6. The court sought for a social inquiry report. According to the findings of the probation officer, the Accused's family background may have contributed to her committing the offence. It is reported that her parents separated at the time she had just gotten married ,forcing her to take the child to her new home; that she missed proper upbringing, that her new husband was not accommodative of the child; that she killed the child in an attempt to save her marriage.
7. I have considered the parties submissions as well as the social inquiry report. It is common ground that he accused killed her 4 -year old son in an attempt to save a marriage to a man, who was not the boy's father.
8. The accused is a first offender and remorseful. She has also pleaded guilty earlier then later albeit to a lesser charge. All the foregoing factors are mitigating in nature. However, against the deceased the accused was in a position of trust and authority. She betrayed her child's trust on her and abused authority given to her as a parent. Abuse of trust and authority is an aggravating factor.( Ref23.7.7.14 of the sentencing policy guidelines)
9. The deceased was also directing her act a vulnerable member of society. This was an aggravating factor. ( Ref: paragraph 23.7.7)
10. I have considered the circumstances of the offence. The accused killed her child, so that she could have a marriage. It is apparent that to her it only boiled down to only two options: either her marriage or the child. Ending the child's life meant a life of comfort or happiness for her. It was a display of an unusually high level of self- centeredness..
11. I have taken note of the mental assessment report which indicates that there was evidence of psychosocial stressors, but the Doctor went on and certified her as fit for trial. Almost everyone is subjected to psycho- social stressor at any given day or every once in a while, and it would be a travesty of justice to excuse crimes because of stresses which are part and parcel of our lives.
12. I further note that the accused had earlier attempted to kill the child through drowning but her sister in law rescued the child. Further after killing the child she threw the body in a pit- latrine. According to the post- mortem report, the cause of death was not drowning but strangulation. Throwing the body in the pit- latrine therefore was an attempt at concealment of her crime which again is an Aggravating factor. She further lied on what had happened to the child and was found bust braiding a client's hair. The fact that she would "go on with life" as put by the prosecution is not a typical reaction of someone who never intended to kill the person.
13. I have looked at the family background. This was a normal family, with the usual domestic wrangles between her parents. The parents were together when the Accused fell pregnant and gave birth to the deceased. Even though she was a teen -mother, she was already an adult when the parents separated. According to the report, her younger siblings were all with the father. Even though the parents had separated, one cannot call such a family too dysfunctional to have led the Accused to such extreme acts as killing her own child.
14. In short, I am not persuaded that her actions were motivated by lack of psycho-social support . It appears to me to have been motivated by an extreme case of selfishness. She was 22 years old when she committed the crime. I am not convinced that her psycho-social problems were so extreme as to impair her judgment.



15. I agree with the prosecution, that with kind of out-look in life , the life of the 7- month old baby that she bore in prison is equally not guaranteed. The phyco- social pressures in life are always there. What the accused need in my view is a deterrent sentence. she needs to spend some time in prison for purposes of introspection .
16. Taking into account all the a foregoing, I hereby sentence the accused to 15 years in prison.
17. The sentence will run from 6.12.2022 being the date when she was first arraigned in court.

**DATED, SIGNED AND DELIVERED IN COURT THIS 22<sup>ND</sup> DAY OF FEBRUARY, 2024**

**S. CHIRCHIR**

**JUDGE.**

In the presence of:

Court Assistant

State;-

