



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO 90 OF 2019

MATHEW LANGAT.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From Original Conviction and Sentence in Kilgoris PM Criminal Case No. 497 of 2019 dated 15th July 2019 before Hon. D.K. Matutu – P.M)

JUDGMENT

1. This is an appeal against the judgment of Hon. Matutu, PM. The trial court convicted the appellant on his own plea of guilty for the offence of manslaughter and sentenced him to 15 years.
2. The appellant was charged with the offence of manslaughter contrary to **section 202** as read with **section 205 of the Penal Code**. The particulars of the offence were that on 21st day of June 2019 at Ngendalel West village, Angata location of Transmara West sub-county within Narok County unlawfully killed **STANELY BURE** (the deceased).
3. The appellant pleaded guilty to the charge. In a nutshell the facts of the prosecution case were that on 21st June 2019 at about 7:00 p.m. the appellant was home with his two children and wife. The wife heard some noise behind the house and informed the appellant. At about 1:00a.m. They heard somebody knocking the window. The appellant took a panga went out, found the deceased and cut the deceased's head. They struggled and he cut the deceased again. Their neighbor heard the commotion, came out and pleaded with the appellant not to cut the deceased. The deceased dragged himself home and was rushed to the hospital where he succumbed to the injuries. The postmortem revealed that the cause of the deceased's death was deep cut wounds. The appellant admitted the facts and the subordinate court entered a conviction on his own plea of guilt.
4. The appeal before me is one on sentence. In **Macharia vs. Republic [2003] EA 559** the Court of Appeal held that,

“an appellate court will not review or alter a sentence imposed by the trial court on the mere ground that if the appellate court had been trying the appellant it would have passed a somewhat different sentence, and will not ordinarily interfere with the discretion of a trial judge unless the judge acted on some wrong principle or overlooked some material factors or issued a sentence that was manifestly excessive.” [Emphasis added]

5. **Section 205 of the Penal Code** provides as follows;

“205. Punishment of manslaughter

Any person who commits the felony of manslaughter is liable to imprisonment for life.”

6. The offence of manslaughter does not have a mandatory sentence and the court has discretion to sentence the appellant with the highest sentence being imprisonment for life. In **Republic v Wilfred Mwitii, Nairobi Criminal Case No. 61 of 2011** as follows: -

*“13. The accused has been convicted of manslaughter and in passing an appropriate sentence herein I am guided by the decision of Justice Muriithi in **High Court of Kenya at Machakos Criminal Case No. 14/2013 REPUBLIC v PHILLIPI MUTHIANI KATHIMA** where the judge stated that the object of sentence is primarily to punish for an offence and or to reform the accused person in such manner as to as appropriate circumstances of the case deter the repetition of the offence by the accused and others taking into account the moral blame worthiness of the accused, the prevalence of the crime and the situation of the accused himself. In this case since the accused had been in custody for 2½ years he was sentenced to one year probation for manslaughter.*

14. In the case of **REPUBLIC V CHRISANDOS WIYALA KAKAMEGA HC Criminal Case No. 26 of 2016** Justice Njoki Mwangi on 18/2/2016 sentenced an accused person who has been in custody for 3 years 8 months to five years' imprisonment for manslaughter, whereas in **High Court of Kenya at Mombasa criminal Case No. 41 of 2014 REPUBLIC v IP VERONICA GITAHU & ANOTHER** a case involving police killing of a minor Muya J sentenced each of the accused persons to seven (7) years imprisonment."

7. The court in **Republic v Jackson Ekital Wuyobas [2018] eKLR** stated as follows;

"[6] On the principle that same offences should attract similar penalties, this court recalls that it has in previous similar cases of manslaughter passed a sentence of imprisonment for periods ranging between 3 years to 8 years depending on the circumstances of the cases, the moral blame-worthiness of the accused and attendant factors including presence of extreme provocation, use of excessive force and whether the accused was the aggressor or merely acting in self defence. See Omuse v. R (2009) KLR 214, R v. Gilbert Kipkorir Koech, KBT. HCCRC No. 58 of 2017 and R. v. Margaret Kabon Talaa & 2 Ors. KBT HCCRC No. 18 of 2017."

8. The appellant during his mitigation told court that his father has a mental disability and that his family depends on him. The trial court upon considering his mitigation held as follows;

"I have considered the probation officer's report on social inquiry. I have also considered the circumstance of the crime. In light of new developments in law as regards sentencing and particularly as regards mandatory sentence, the accused is sentenced to serve fifteen (15) years imprisonment."

9. In this case the trial court seems not to have considered that when the incident took place the appellant was of the view that the deceased as an intruder and he was protecting his family from the said intruder after his wife alerted him that there was someone outside their house twice on that night. Having considered the attendant factors, the probation report and the appellant's mitigation, I find the term of 15 years' imprisonment harsh and excessive.

10. In the circumstances, I find the appeal to be meritorious and I substitute the 15 years' sentence with a term of 4 years. The sentence shall run from the 15th July 2019.

Dated, signed and delivered at Kisii this 25th day of June 2020

R.E. OUGO

JUDGE

In the presence:

Appellant In Person

Mr. Otieno Senior Prosecution Counsel Office of the DPP

Ms. Rael Court Assistant