



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL APPEAL NO. 19 OF 2014

GEORGE OSERE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in criminal case No. 1125 of 2014 of the Chief Magistrate's Court at Busia by D.O Ogola-Chief Magistrate)

JUDGMENT

1. The appellant, **GEORGE OSERE**, was convicted for the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.
2. The particulars of the offence were that on 22nd October 2013 at **ALLELES** village, **KAKAPEL** Sub location of **BUSIA** County, unlawfully caused the death of **NASIMIYU EPURET**.
3. He was convicted after he had pleaded guilty to the offence and sentenced to serve ten years imprisonment.
4. He now appeals against the sentence which he claims was harsh and that his mitigation was not considered.
5. The state opposed the appeal through Mr. Omayo, the learned counsel, who was of the opinion that the sentence was lenient.
6. The facts of the prosecution case were briefly as follows:

The deceased herein was the mother of the appellant. On the material day the appellant went into his mother's house and picked a quarrel with her. He slapped her and she raised an alarm. Her other son rushed in, in response to her screams. The appellant threatened to cut his brother with a machete but the deceased stood between the two and the appellant's brother ran away. The appellant continued to beat his mother. She sustained injuries and on the following day she was taken to hospital where she was admitted in a serious state. She subsequently succumbed to the injuries.

7. When the post mortem was conducted, she was found to have sustained fractures on the 2nd, 3rd, 4th, 5th, & 6th ribs and lung haematoma on the right hemi thorax. The cause of death was cardio respiratory arrest following severe right sided chest injuries.

8. Section 205 of the Penal Code provides as follows:

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

I will address my mind to the circumstances of the offence without losing sight of the prescribed sentence.

9. An appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the order of the trial court. These circumstances were well illustrated in the case of **NELSON vs. REPUBLIC [1970] E.A. 599**, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in JAMES Vs. REX (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in

view of the circumstances of the case. R Vs. SHERSHEWSITY (1912) C.CA 28 T.LR 364.

10. Though the appellant was a first offender, the injuries he inflicted on his mother and the circumstances surrounding the offence, militate against any interference with the sentence meted out by the learned trial magistrate. I accordingly dismiss the appeal.

DELIVERED and SIGNED at BUSIA this 15th day of March, 2018

KIARIE WAWERU KIARIE

JUDGE