

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

HCCRA NO.1 OF 2015

(FORMERLY MERU HCCRA 47 OF 2015

KINEGENI BASILIO.....APPELLANT

VERSUS

REPUBLIC.....PROSECUTOR

(From the original conviction and sentence in Criminal Case No.114 of 2015 in the Principal Magistrate's Court at Chuka made on 20/2/2015).

JUDGMENT

1. On 13th February, 2015, James Kinegeni Basilio "the Appellant" was arraigned before the Chief Magistrate's Court Chuka with the Offence of Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. It was alleged that on the night of 1st February, 2015 at Ncharichu village, Ikuu Sub-location, Iruma location, within Tharaka - Nithi County, the Appellant unlawfully killed Justus Munene Mukindia. The Appellant pleaded guilty and was convicted of the offence and sentenced to six (6) years imprisonment. Aggrieved by that decision, the Appellant appealed to this court.

2. In his Petition of Appeal he set out the following as the grounds of Appeal; that he had no knowledge of the right of appeal within 14 days: that he has a family that depends on him for food and shelter and that his close relatives who could help his family are irresponsible and cannot be of any help to his family. He therefore urged the court to quash the conviction and set aside the sentence. When the matter came up for the hearing of the Appeal the Appellant abandoned the Appeal and pleaded with the court to reduce his sentence.

3. I have looked at the record. The Appellant pleaded guilty to the charge. He admitted that the facts constituting the offence were true. Section 348 of the Criminal Procedure Code provides:

" No Appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence".

4. In view of the foregoing, the Appellant has no right of appeal and he may have been right to abandon the appeal. In his own words, he did not wish to argue the appeal as all he wished was the court to reduce his sentence. Indeed what was contained in the grounds of appeal cannot be said to be grounds of appeal per se. They are grounds of mitigation. In this regard, the Appellants appeal had no basis in law and was properly abandoned.

5. However, the Appellant pleaded with this court that his sentence be reduced and/or the balance of his sentence be reduced to non-custodial. I have noted from the facts constituting the offence that truly the Appellant was attacked by the deceased. He may have been defending himself which resulted in the fatal blow. However, that does not give this court any jurisdiction to interfere with either the conviction or the sentence. The only available avenue for him is to be of good conduct, be reformed and satisfy the prisons authorities that once the conditions are favourable under the Community Service Order Act No. 10 of 1998 and that he satisfied the criterion set out thereon, he may be released under that Act. The record shows that he was sentenced only last year, that law applies to convicts whose balance of the sentences

are not more than three (3) years. The Appellant is not yet of that category.

6. In the circumstances, I find the Appellants request to be without merit and the same is hereby dismissed.

DATED and Delivered at Chuka this 17th day of March, 2016.

A.MABEYA

JUDGE

Judgment read and delivered in open court in the presence of all parties.

A.MABEYA

JUDGE

17/3/2016