



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPEAL NO. 79 of 2013

STEPHEN MWORIA MURIUNGI.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

JUDGMENT

Stephen Mworia Muriungi, the appellant, was charged with the offence of manslaughter contrary to **Section 202** as read with **Section 203 of the Penal Code**. The particulars of the charge are that on 5/6/2013 at K.K. Mirera Village, Kiburu Sub Location, Rwanda Location, Tigania West, he unlawfully killed **Silas Koome Muriungi**.

When the case came for plea and after mental assessment, the charge was read to accused who pleaded, was convicted and sentenced to life imprisonment. He was dissatisfied with the conviction and sentence and preferred this appeal. The grounds of appeal are that he pleaded guilty to the offence; that they were fighting with the deceased brother, and that the deceased overpowered him and that he was defending himself and lastly, that his parents are old and depend on him for their daily bread. He filed written submissions in support of his appeal.

The appeal was opposed. Learned Counsel for the State, Mr. Mungai, opposed the appeal when he submitted that the charge was read to the appellant in Kimeru; facts were read to the appellant at a later date and that the appellant can only appeal against the extent and legality of the sentence. He urged that the sentence is legal.

Before the plea was taken, the appellant was certified to be fit to plead to the charge. The charge was read to the appellant in Kimeru, the language he was said to understand. In fact, the appellant has not alleged that he did not understand the language.

The appellant first appeared in court on 14/6/2013 when the charge was read but the court realized that there was no mental assessment report. The plea was not taken till 24/7/2013. After he admitted the charge, facts were not ready till 25/7/2013 when they were read to him. The matter was again adjourned to 13/8/2013 to await the post mortem report and it was presented to court on 14/8/2013 when the facts were read to him again and he persisted in his plea of guilty. That is when he was convicted. The conviction was not done till after about 2 months from the date of arraignment in court. If the appellant was not sure of what had happened, he would have been clear in his mind whether indeed he did not wish to plead guilty.

Under **Section 348 of the CPC**, no appeal shall lie in a case where an accused has pleaded guilty and has

been convicted on his plea. He can only challenge the plea to the extent and legality of the sentence. The appellant can also challenge the conviction if the plea was unequivocal.

As to whether or not the plea was unequivocal, the appellant has not challenged the fact that he pleaded guilty. He mentions in his grounds that he was attacked and was defending himself which was all contained in the facts that were read to him. Though he then goes ahead to pray that the conviction be quashed, he did not raise any ground that would warrant the quashing of the conviction and the court will find that he was properly convicted on his own plea.

I think that the appellant's plea is basically on the sentence meted on him. First of all, the court should have warned the appellant of the likely sentence that the offence attracts upon conviction, before he took plea. The court did not do that but that notwithstanding, upon conviction for a charge of manslaughter, the maximum sentence is life imprisonment. In this case, the appellant pleaded guilty to the offence. He was treated as a first offender. The court should have taken into account the circumstances under which the offence was committed. It is the deceased who first attacked the appellant, by cutting him on both hands and the appellant acted in self defence though he used excessive force by cutting the deceased on the head three times when he could have disabled him and disarmed him. But then, this was done in the heat of the moment. In the circumstances, the sentence of life imprisonment was harsh and excessive. For that reason, I quash the said sentence. Instead I sentence the appellant to a period of 5 years imprisonment.

The sentence will run from the date he was sentenced by the trial court on 14/8/2013.

It is so ordered. Right of appeal 14 days.

DATED, SIGNED AND DELIVERED THIS 10TH DAY OF DECEMBER, 2015.

R.P.V. WENDOH

JUDGE

10/12/2015

PRESENT

Mr. Mulochi for State

Ibrahim/Peninah, Court Assistants

Present, Appellant