



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 205 OF 2008

LESIIT, J

JOSEPH MUTEMBEIAPPELLANT

VERSUS

REPUBLICREPOUDENT

(An appeal from the judgment and conviction in the Criminal Case No. 1942 of 2003 in the Principal Magistrate court at Chuka.)

JUDGEMENT

1. The appellant was convicted of one count of manslaughter contrary to section 202 as read with section 205 of the Penal Code. He was sentenced to 10 years imprisonment on 2nd May, 2008. He has served six years of his sentence.
2. The Appellant was aggrieved by the conviction and sentence and therefore filed his appeal. In his grounds of appeal he cites the following five grounds:.
 1. **That the learned trial magistrate erred in both law and facts in convicting me on the prosecution evidence which was most unsatisfactory and inconclusive.**
 2. **That the learned trial magistrate erred in both law and facts in relying on PW1's evidence whereas the evidence given did not amount to dying declaration.**
 3. **That the case for the prosecution was far from proved in that, vital and reliable witnesses were uncalled, thus no justice decision could be reached.**
 4. **That the learned trial magistrate erred in law and in imposing a manifestly harsh and excessive sentence which was against the actual weight of the evidence adduced.**
 5. **That my defense statement was not given any adequate consideration which was an error in law.**
3. When the appeal came up for hearing on the 10th April, 2014 the Appellant abandoned his appeal against conviction. He urged his appeal against sentence. He stated that the sentence was excessive and needed to have it reduced.
4. Mr. Moses Mungai Prosecution Counsel did not oppose the appeal for reason he made no comments. He explained his difficulty as lack of proceedings and judgment of the lower court.
5. Indeed the lower court proceedings were not availed. Officers from this court have made three trips to Chuka Law Court to obtain the original court record in vain. The record appears to have been lost.

6. Should I decline to consider appellants appeal against sentence only because the record cannot be found? I think it will be unfair to do so. The Appellant has a right to an appeal under Chapter XI of the Criminal Procedure Code and that right cannot be ousted by loss of the file.
7. The Appellant challenges the sentence alone. He was convicted of manslaughter contrary to section 202 as read with section 205 of the Criminal Procedure Code. A person convicted of that offence is liable to imprisonment for life. The Appellant was sentenced to 10 years imprisonment. He has served six years and one month of that sentence. The circumstances of the offence are unknown. To be fair to the Appellant who may never be able to get the lower court record even if his matter is delayed, I will consider his appeal favourably.
8. I will allow his appeal by reducing his sentence from 10 years imprisonment to 8 years imprisonment. The Appellants appeal against sentence is allowed to that extent.

DATED AT MERU THIS 18TH DAY OF JUNE 2014.

LESIIT, J.

JUDGE.