



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL CASE NO. 83 OF 2012**  
***LESIIT, J***

**TARACISIO MBAE MWAMBA.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

*(An appeal from the Judgment and sentence in Nkubu Principal Magistrate's Court Criminal Case Number 580 of 2011)*

**JUDGMENT**

1. The Appellant **Taracisio Mbae Mwamba** was convicted of one count of manslaughter contrary to section 202 of the Penal Code. He was sentenced to 8 years imprisonment, on 2<sup>nd</sup> November, 2012. Being aggrieved by the conviction and sentence he filed this appeal.
2. When he came for the hearing of the appeal, the Appellant abandoned his appeal against conviction and pursued his appeal against sentence.
3. In his submission, the Appellant urged that he has seven children who were in school and who were struggling as his wife was not mentally stable. The Appellant explained that the deceased was his son and that on the day in question his son called him out of a hotel where he was having tea and then attacked him. That he was unarmed and that he disarmed his son and used his weapon against him. He said he had no intention of killing his son.
4. Mr. Edwin Mulochi, the Prosecution Counsel did not oppose the appeal, counsel urged that the deceased was Appellant's son and that he had troubled his father and even taken him to their Area Chief.
5. The Appellant corrected Mr. Mulochi's submission by saying it was him who had taken his deceased son to the Chief for his assistance so that the son may study. I confirmed same from the proceedings.
6. As earlier stated the appeal is unopposed. I have considered the circumstances of this offence. It is clear that the Appellant is father of deceased. There is evidence the deceased severely provoked the Appellant by disrespecting him, refusing to go to school and causing the Appellant to seek help from Local Administration. Besides all these it was the deceased who first attacked the accused.

7. Taking into account all the facts of this case, and the pre-existing bad behavior of the deceased towards the accused who is his birth father, I find the sentence of 8 years imprisonment was excessive in all the circumstances of the case.

8. The Appellant has served one year and eight months of his 8 years imprisonment sentence. I will set aside the sentence of 8 years imprisonment and in substitution thereof sentence the appellant to 3 years imprisonment from the date of sentence in the lower court.

9. The Appellant's appeal against the sentence succeeds to the extent shown herein above.

**DATED SIGNED AND DELIVERED THIS 22<sup>ND</sup> DAY OF JULY, 2014**

**LESIIT J.**

**JUDGE.**