



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MERU**  
**CRIMINAL APPEAL NO. 57 OF 2004**

*LESIT, J*

**JOSEPH KAINGA.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

*(Being an appeal from CMS Court Meru from the  
Judgment and sentence of R. Kimingi Principal Magistrate  
delivered on 2<sup>nd</sup> April 2004.)*

**JUDGEMENT**

1. The Appellant **JOSEPH KAINGA** pleaded guilty to one count of manslaughter contrary to section 202 of the Penal Code. The Appellant was sentenced to serve an imprisonment term of 20 years. Being aggrieved by the sentence he appealed to this court.
2. The Appellant in his appeal has urged this court to be lenient because he did not intend to cause the death of the deceased. He stated that he the deceased and his co accused who is now deceased were all drunk when they fought on the material day. He said that after the fight they parted ways and that it was not until the next day that he learnt of the death of the deceased. The Appellant urged that he is remorseful for the offence and that he will never repeat it given a chance. He also said that he was 25 years old when he when he was convicted for this offence. He urged the court to note that he had been in custody since 2002.
3. Mr. Mungai State Counsel appeared for state in his brief submissions Mr. Mungai urged the court to find that the sentence was justified and that by imposing 20 years imprisonment the court was lenient to the Appellant.
4. I have considered this appeal. I have noted that the Appellant pleaded guilty to the offence. From the brief facts of the case as lead by the prosecution it was the deceased Appellant who hit the deceased on the head. According to the Prosecution the Appellant hit the deceased on the leg. The cause of death was clearly the injury that was caused by the deceased Appellant. The motive of the Attack is not clear of the facts by the prosecution neither is it very clear whether the Appellant and his co-accused were acting with any common intention.
5. The Appellant is not challenging the conviction. However it is very clear from the facts of the prosecution case that whatever role he played in the matter was peripheral.
6. I have noted that the Appellant was sentenced to 20 years imprisonment on 2<sup>nd</sup>, April, 2004. He has therefore served 9 years and seven months imprisonment. From my observations of this case including the fact that the Appellant pleaded guilty to the charge that he is remorseful for the offence. That he has been in prison for over 9 ½ years and the role that he played in this offence, I am satisfied that the Appellant has served sufficient punishment for the offence. I will allow his appeal against the sentence by setting aside the imprisonment term of 20 years and substituting it with imprisonment for the period already served. The Appellant should be set at liberty forthwith unless he is otherwise lawfully held.
7. Those are my orders.

**DATED SIGNED AND DELIVERED AT MERU THIS 23<sup>rd</sup> DAY OF OCTOBER, 2013.**

**J. LESIIT**

**JUDGE**