

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO.98 OF 2011

A O O.....APPELLANT

VERSUS

REPUBLICRESPONDENT

[Being an appeal from Original Conviction and Sentence from Chief Magistrate's Court Kisumu

in

Criminal Case No.67 of 2011

J U D G M E N T

The appellant was convicted of manslaughter c/s 202 and 205 of the Penal Code whose particulars were that on 25/12/10 at Underson Estate in Kisumu East District in Nyanza Province he unlawfully killed E A O. The conviction followed a trial in which the state called 7 witnesses. He testified on oath in defence. He was sentenced to serve 5 years in jail. He appealed against the conviction and sentence, but come the appeal day he abandoned the challenge against conviction.

The evidence on which the appellant was convicted was that the deceased was his wife with whom they had two children. He found her drinking in the bar with two other women and took her home. Later that night he called a neighbour to help take her to hospital. She was unconscious. She died in hospital while being treated. She died from presence of blood in a right lung. The 2nd rib on the right side was fractured. He testified that the deceased had fallen three times on her own that night. However, the court found that he had caused the injuries to her and that she had died from the injuries. The appellant is not challenging that conviction.

On sentence, the death was as a result of domestic violence. The couple had children. The appellant was a first offender. The offence was serious given that the maximum penalty was life imprisonment. I do not think that the sentence was excessive given the facts. I will not interfere with it. The consequence is that the appeal against sentence is dismissed.

Dated, signed and delivered this 18th day of October, 2013.

A. O. MUCHELULE

J U D G E