



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERUGOYA**  
**CRIMINAL APPEAL NO. 134 OF 2012**

**ANTONY MAINA NJOGU .....APPELLANT**

**-VERSUS-**

**REPUBLIC .....RESPONDENT**

*(From the original conviction and sentence in Criminal Case Number 238 of 2010 in the Senior Resident Magistrate's court at Baricho – Mr J.N. Mwaniki- SRM*

**JUDGMENT**

The appellant **ANTONY MAINA NJOGU** was charged with the offence of manslaughter contrary to **section 202 as read with Section 205 of the penal code** particulars being that on the 8<sup>th</sup> day of March 2010 at Mlango Kubwa area in Mukure location, Kirinyaga West District of the Central province, he unlawfully killed Jeremiah Mwangi Muriuki.

After a full trial in the lower court, the appellant was convicted and sentenced to five years imprisonment.

Being dissatisfied with the conviction and sentence, the appellant filed this appeal through his advocates Ngige Gichoya & company Advocates raising five grounds of appeal.

A perusal of the grounds of appeal reveals that the appellant's main grievance was that he had been convicted on the basis of insufficient evidence and that the sentence imposed on him was manifestly harsh and excessive considering all the circumstances of the case.

Briefly, the case for the prosecution was that on 6<sup>th</sup> March 2010, the appellant and the deceased had a confrontation subsequent to which the appellant assaulted the deceased. As a result of the assault, the deceased sustained head injuries for which he was treated at Mt Kenya hospital with the appellant footing his medical bill. He was discharged after treatment but he succumbed to the injuries on 8<sup>th</sup> March 2010 and passed on.

According to the post mortem report produced by PW7 the doctor who performed the post mortem, the deceased had sustained head injuries including a fractured skull which caused his death.

In his defence, the appellant denied having committed the offence but after evaluating his defence and comparing it with the evidence adduced by the prosecution, the trial magistrate concluded that the appellant had committed the offence and accordingly convicted him.

When the appeal came up for hearing, the appellant chose to proceed with the appeal on his own since his counsel failed to attend the court.

In prosecuting his appeal, the appellant made oral submissions in which he abandoned the appeal against conviction and only pursued the appeal against sentence.

In his submissions, he urged the court to reduce his sentence to the term already served on grounds that the sentence imposed on him was harsh and excessive considering the circumstances surrounding the commission of the offence; that he never intended to kill the deceased; that he assisted in taking him to hospital and that he has learnt a lot in prison and was now a reformed man.

The state through M/S Macharia did not oppose the appeal against sentence.

Having considered the appeal and the evidence on record, I find that the appellant made the right decision in abandoning his appeal against conviction since the evidence adduced before the lower court left no doubt that he had committed the offence.

On sentence, the offence of manslaughter for which the appellant was convicted attracts a maximum sentence of life imprisonment. The appellant in this case was sentenced to five(5) years imprisonment which cannot be said to have been harsh or excessive. However, considering the circumstances in which the offence was committed; the appellants conduct thereafter of escorting the deceased to hospital as well as paying his hospital bills, an indicator in my view that he was remorseful and had not intended to kill the deceased and considering that the appellant was a first offender a fact which appears to have escaped the notice of the trial magistrate, I think that a lesser sentence may have been more appropriate in this case.

Taking everything into account including the fact that the state is not opposed to the appeal, I am minded to allow the appeal against sentence which I hereby do.

I note that the appellant has to date served a period of about three (3) years imprisonment and in my view this constitutes sufficient punishment for the offence he committed.

In the circumstances, I set aside the sentence imposed by the Learned trial magistrate and substitute it with the period already served. The appellant is to be set free forthwith unless otherwise lawfully held.

**C.W. GITHUA**

**JUDGE**

**DATED, SIGNED AND DELIVERED at KERUGOYA THIS 11<sup>TH</sup> DAY OF**

**DECEMBER 2013** in the presence of:-

The appellant

Mr sitati for state

Kariuki Court Clerk