



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL 7 OF 2010
PATRICK NJIRU KABERIAAPPELLANT
VERSUS
REPUBLICRESPONDENT

(An appeal from the Judgment of J. N. Nyagah Senior Resident Magistrate in Maua Principal Magistrate’s Criminal Case No. 1458 of 2009)

J U D G E M E N T

The Appellant was convicted of one count of manslaughter contrary to section 202 of the Penal Code, by the SPM’S Court Maua on 7th December, 2009. He was sentenced to 10 years imprisonment on the same day. He was aggrieved by the conviction and sentence and so filed this appeal.

When the appeal came up for hearing on the 19th June, 2012 the Appellant abandoned his appeal against the conviction and appealed against the sentence alone.

I have looked at the Appellant’s Petition of appeal and find 5 grounds relevant to his appeal against sentence. These are grounds 2,4,5,6 and 7 which provide as follows:

- 0.
- 1. **That the crime was as a defensive action on my side as I was attacked first.**
- 0.
- 1. **That I and the victim were totally drunk therefore unable to take any more beer as long as I live.**
- 0. **That I have given my life to God and promised never to take any more beer in my life as long as I live.**
- 0. **That I am married with children and my dear wife lives in a hired house and my absence will deny them their sustenance as I am the sole bread winner of the family.**

0. That the act was not habitual or premeditated in nature.

The appeal is opposed. Mr. Mungai learned Counsel for the State urged the court not to disturb the sentence as the offence for which the Appellant was convicted was serious.

In the Appellant's short address in submissions, he urged the court to reduce his sentence because his children had been left in the care of his elderly mother after his wife ran away upon his conviction for his offence. The Appellant also urged that this conviction was the first one, that he had reformed his character and vowed never to repeat such offence.

I have considered the appeal, grounds raised by the Appellant in his Petition, the Appellant's submissions and those by the learned State Counsel. Having done so I do find that from the word go the Appellant's position was that it was the deceased who was armed with the panga and that it was the deceased who attacked him while still seated on PW1's motor bike before both disembarked from it. The learned trial magistrate overlooked that aspect of the case while passing sentence. The fact a person acted in self defence, that he was a victim not the aggressor, and that the weapon used was in the first place in the possession of the deceased, are good mitigating factors which should dictate to the lowering of the sentence in the accused favour.

In addition to those mitigating factors, the Appellant has shown his remorse for the offence and has stated that he has, since being imprisoned, reformed his character for the better.

I have considered that the Appellant was in custody during the pendency of this trial in the lower court since 20th April 2009. In total the Appellant has been in prison custody for 3 years and 3 months. I have taken all these factors into consideration and have come to the conclusion that the sentence passed against the Appellant was harsh and should be disturbed downwards.

I will allow the Appellant's appeal against sentence by reducing it from 10 years imprisonment to 5 years imprisonment from the date of sentence in the lower court.

The Appeal succeeds to that extent.

Those are my orders.

DATED SIGNED AND DELIVERED THIS 28TH DAY OF JUNE 2012.

LESIIT, J

JUDGE