



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MALINDI
CRIMINAL APPEAL 19 OF 2011

(From original conviction and in criminal case no. 517 of 2009 of the Senior Resident Magistrate court at Kilifi)

OKECH MIYA.....APPELLANT

VS

REPUBLIC.....RESPONDENT

REASONS FOR THE JUDGEMENT DELIVERED ON 13/6/12

1. The accused was tried and convicted for the offence of Manslaughter contrary to section 202 as read with section 205 of the Penal Code, it being alleged that on 22nd June, 2009 at Vipingo village, Kilifi District he unlawfully killed SAIDI KATANA NGALA. He was sentenced to life imprisonment.

2. Dissatisfied with the decision he appealed to this court citing seven Amended grounds whose substance is that the sentence was unlawful, that the conviction was against the weight of the evidence and that the charge sheet was defective. He made lengthy written submissions.

The state opposed the appeal on conviction but conceded that the sentence was excessive in light of circumstances of the offence.

3. On 13/6/12 the court gave judgement allowing the appeal on sentence alone and requested for a probation report in respect of the appellant.

Hereunder are the reasons for that decision;-

Two witnesses in the lower court (Pw 1) the Chief Vipingo and the village chairman (Pw 2) gave what is clearly credible evidence that after killing the deceased, the appellant himself reported to Pw 1 at 1.15am on 22.6.09. The two witnesses went to the appellant`s house and saw blood spots on the ground.

4. They found the deceased lying unconscious with multiple cuts from which he died soon after. There before the Chief had received and tried to resolve many disagreements between the deceased and the accused. Apparently, there was rivalry between them over a woman and the deceased had been incarcerated for stealing the appellant`s radio. Upon release the deceased continued to threaten the appellant.

5. In his defence the appellant confirmed the bulk of this evidence and said that the deceased attacked him in his house on the night of 21st & 22nd June 2009 and that the two men fought. The deceased's body was found in his home but he denied having inflicted the fatal injuries on the deceased.

6. In the proven circumstances of the case, the appellant alone had cause and opportunity to harm the deceased. There was no evidence that the fight involved any third parties. The appellant's conviction was based on a sound analysis of the evidence and cannot be faulted. His denial with respect to the deceased's injuries was untenable. At any rate he confessed to Pw 1.

7. With respect to the sentence however, the same was lawful but in light of the mitigating factors was excessive. The appellant was a first offender. The circumstances of the offence show that the appellant was labouring under intense provocation and even risk of harm from the actions of the deceased. He seems to have acted in self defence even though he appears to have used excessive force, he did not deserve the maximum sentence prescribed for the offence. Although the trial magistrate correctly noted the seriousness of the offence, he seems to have overlooked the extenuating circumstances of the case.

(See Ogalo s/o Owuora Vs Republic(1954) 21 EACA 270

James Vs Republic(1950) 18 EACA 147. Therefore, while upholding the conviction I set aside the sentence and called for a probation officer's report. -

Delivered and signed at Malindi this 19th day of June, 2012 in the presence of Mr Naulikha – State, Appellant present, c/c-Evans/Leah.

C.W.MEOLI
JUDGE