REPUBLIC OF KENYA

IN THE HIGH OF KENYA AT NAIROBI

MILIMANI LAW COURTS

Criminal Appeal 249 of 2010

REPUBLIC..RESPONDENT

VERSUS

SAMSON AKONYA ANYUTA..APPELLANT

JUDGMENT

The appellant herein was charged with the offence of manslaughter contrary to Section 202 of the Penal code. He was tried and convicted and upon conviction sentenced to 10 years imprisonment. This appeal arises from the said conviction and sentence. The appellant filed grounds of appeal on 8th April, 2010 which he however amended subsequent thereto and filed the amended grounds of appeal which are annexed to his written submission presented during the hearing of this appeal.

As the first appellate court it is my duty to evaluate the entire evidence adduced against the appellant in the lower court and come to independent conclusions. In convicting the appellant the learned trial magistrate said as follows,

"**From the evidence on the record no eye witness testified as to what transpired on the material dates. The evidence on record is therefore circumstantial which after careful consideration I am satisfied that the accused unlawfully killed the deceased for the following reasons.**

The first was that the accused was arrested soon after the death of the accused and the knife which he used was recovered and produced herein as exhibit 3. Further the accused was beaten up by members of public he was only rescued by the administrative police officers who took him to the hospital. This has been corroborated by P.W. 4 the arresting officer and the investigating officer P.W. 6. "

The learned trial magistrate then addressed the issue of the statement that the appellant recorded before one Inspector Langat on 10th June, 2008 and produced as exhibit 4. In accepting the contents of the said statement the learned trial magistrate had the following to say.

"I accept the statement as admissible herein. In the statement the accused confessed to killing the deceased herein. He has stated that the deceased had gone with a letter to his house when an argument started between them. That the deceased had a knife which he dispossessed him and that the deceased attacked with a metal bar. The accused retaliated by stabbing the deceased who died on the spot.

The statement recorded by the accused corroborates the evidence of P.W. 1, P.W. 2, Pw 4 and P.W. 6 on what transpired on the material day. I therefore take the statement as recorded by the accused as the named turn of events on the material day. This is because no eye witness has adduced evidence as to what exactly transpired on that day".

The learned trial magistrate then considered the defence of the appellant which he dismissed as untruthful and a sham. It is worth noting however that the learned trial magistrate found that the appellant acted in self defence although it was unfortunate that a precious life was lost in the process.

With respect, I agree that there was no direct evidence, or to put it another way, evidence of an eye witness to confirm that it was the appellant who stabbed the deceased leading to his death. However, the information received by P.W. 1 and P.W. 2 was enough to implicate the appellant to the exclusion of any other person. P.W. 1 and P.W. 2 are a brother and nephew of the deceased respectively. Both went to the home of the deceased soon after the incident had taken place. They found the wife of the deceased called Dorcas who narrated to them what had led to the death of the deceased. This information pointed to the appellant and non other. Regrettably, the wife of the deceased, the said Dorcas, did not testify in this case for the reason that dowry had not been paid by the family of the deceased.

The body of the deceased was examined by a Doctor Wasike whose report was produced by Doctor Odour, the pathologist at City mortuary who had worked with Doctor Wasike. He was familiar with the handwriting and signature of the said Doctor Wasike with whom he had worked for 3 years. He was competent to produce his report in the absence of Doctor Wasike. He confirmed that the cause of death was the penetrating abdominal injury due to a sharp object.

The appellant was also examined by Doctor Kamau who noted an injury on the left temporal sleeve and on upper left optical skull. The appellant told Doctor Kamau that he had been attacked by members of the public. It is significant to note that what the appellant told Doctor Kamau is not what he said in his defence whereby he told the court that he was beaten by one of the people who accosted him along the way when he was going home.

I have looked at the statement said to have been given by the appellant to Inspector Langat. The procedure applied was lawful and cannot be faulted. The contents of that statement could only have come from the appellant and no one else. This is because some of the details are of such personal nature and could not be attributed to Inspector Langat or any other person for that matter. That statement corroborated the evidence of P.W. 1, P.W. 2 and that of Doctors who examined both the appellant and the deceased.

The appellant complained that he was no asked to plead to the charge. I have looked at the record the charge was read over and explained to the appellant. However, his answer thereto is not on the record. That notwithstanding the fact that the trial proceeded by the calling of witnesses by the prosecution confirms that the appellant must have denied the offence. The omission to record his answer to the charge did not occasion any miscarriage of justice.

In my assessment of evidence on record I am persuaded that the prosecution adduced sufficient evidence to justify the conclusions arrived at by the learned trial magistrate. The conviction was therefore justified. The sentence imposed was lawful and not harsh or excessive. I have no reason to interfere with the same. Accordingly this appeal is hereby dismissed.

Orders accordingly.

Dated, signed and delivered at Nairobi this 31^{st} day of July, 2011.

A. MBOGHOLI MSAGHA
<u>JUDGE</u>