



REPUBLIC OF KENYA  
IN THE HGH COURT OF KENYA AT KISII

Criminal Appeal 50 of 2011

ALFRED OURU OKUKU.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGMENT

(Being an appeal from the conviction and sentence of the Senior Resident Magistrate's Court at Homa Bay,

Hon. C. A. S Mutai in Criminal Case No. 523 of 2010 dated 15<sup>th</sup> October, 2010)

The appellant, Alfred **Ouru Okuku** was charged with manslaughter contrary to section 202 as read with section 205 Penal code. The particulars of the charge were that on 8<sup>th</sup> day of March 2010 at Oganda village in Homa Bay district within Nyanza Province unlawfully killed **Samuel Okoth Ouma**. He pleaded not guilty to the charge, was tried and convicted by the SRM's court, Homa Bay. He was sentenced on 15<sup>th</sup> October 2010 to serve 12 years in prison.

The appellant has now appealed against sentence. In his undated petition filed on 16<sup>th</sup> March 2011, the appellant has prayed for leniency. He has stated that being a first offender the sentence imposed on him was harsh; that he was an orphan and a bread winner of his family and extended family. He has also prayed that the court considers his mitigation.

The appeal came before me for hearing on 18<sup>th</sup> July 2012. The appellant submitted that he agreed with the conviction and was only appealing against sentence. He asked the court to reduce his sentence so that he can go home and take care of his children. The state through learned counsel **Mr. Mutai** opposed the appeal. **Mr. Mutai** submitted that the offence attracts a life sentence under section 205 of the **Penal Code**. Counsel submitted that a sentence of 12 years was therefore lenient.

I have considered the record and the rival submissions. The appellant killed a relative, a boy aged 14 years whose only mistake was to have let his family's goats stray onto the appellant's shamba. The appellant was found to have brutally injured him by hitting him against a log and stepping on his chest. That indeed was brutal. It is said that the boy was an orphan. The appellant seems to have been a victim of unbridled rage.

In submissions before this court, the appellant has prayed for leniency and mercy. I have considered that. I have also considered that justice looks both ways. I hold that the sentence meted out by the trial court was neither harsh and excessive nor lenient. I uphold it.

Accordingly I dismiss the appeal. The appellant shall serve the sentence imposed by the trial court.

**Judgment dated, signed and delivered at Kisii this 27<sup>th</sup> day of September, 2012.**

**R. LAGAT-KORIR**  
**JUDGE**

**In the presence of:**

Samwel Ombati:for appellant (present/absent)

..... :counsel for respondent (present/absent)

Edwin Mongare :court clerk

**R. LAGAT-KORIR**  
**JUDGE**