



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MERU**

**CRIMINAL CASE NO. 107 OF 2009**

*(From: Original Criminal Case No. 189 of 2008 MARSABIT; CHARLES OBULUTSA PM)*

**LESIT, J.**

**DABASO MEGA**

**DUBA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

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**JUDGEMENT**

The appellant was arraigned before the Marsabit Principal Magistrate's court on the 22<sup>nd</sup> August, 2008 with one count of manslaughter contrary to Section 202 of the Penal Code. He pleaded guilty to the charge and was convicted of the offence and sentenced to 10 years imprisonment. He was aggrieved by the sentence imposed against him and therefore filed this appeal.

In his petition of appeal he has raised 8 grounds of appeal. He has pleaded that he was involved in a domestic "vendetta" with his wife during which time he hit her without an ulterior motive of malice aforethought harboured. He also pleads that he is very remorseful in that when he hit his wife she lost her life against his expectation. He states further that he reported the matter to the police station by himself and that that denotes that he did not deliberately take the life of his wife but that it was accidental. He also states that the sentence of 10 years imprisonment is excessive, that he is a first offender, that he has 6 children badly in need of his care now that their mother has died and that he has faith in God and promises to lead a positive life henceforth, never to be involved in any felony.

When the appellant appeared before this court he made a brief submission in person, in which he

reiterated that he had 6 children with his late wife, and that she died accidentally at his hands. He asked the court to reduce the sentence for the sake of his children.

Mr. Musau learned counsel for the State submitted that the sentence imposed against the appellant was lawful. He however, stated he left the matter of sentence with the court.

I have considered this appeal. The circumstances of the incident are set out in the facts led by the prosecutor before the lower court. It is very clear that the appellant was fighting with the deceased who is his wife and that in the cause of the fight he threw her to the ground. The deceased fell down and hit her head on some stones that were at the scene and she started bleeding from the head. The cause of death was found to be bleeding on the brain. From these facts it is clear that the actual cause of death was not an injury that was inflicted by the appellant. I still fault the appellant for leaving the wife helpless on the ground and for failing to take her to the hospital having seen the turn of events.

I have considered the appellant pleaded guilty to the offence therefore saving court's time and also proving his remorsefulness for the offence. I have also considered that he is a first offender. The appellant and the deceased had 6 children who have been left destitute for no fault of their own. I think that considering the circumstances of the case, which shows the deceased's death was due to inadvertence. The remorsefulness of the accused and the children who have been left destitute ought to have been considered more seriously. Clearly the sentence of 10 years imprisonment was harsh, excessive and does not serve the interest of justice in this case.

I have considered all the above. I have also considered that the accused has been in prison since the 22<sup>nd</sup> August, 2008. It is my view that the accused has served sufficient punishment for this offence and therefore set aside the sentence of 10 years imprisonment. In substitution thereof I reduce the sentence to the period of imprisonment already served.

**Dated, Signed and Delivered this 26<sup>th</sup> day of May 2011.**

**LESIIT, J**

**JUDGE**