



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL APPEAL NO. 73 OF 2008

ERASTUS CHEGE MAINAAPPELLANT

Versus

REPUBLIC.....RESPONDENT

JUDGMENT

ERASTUS CHEGE MAINA, the appellant was convicted on his own plea of guilt for the offence of *manslaughter contrary to section 202 as read with section 205 of the Penal Code*. He was then sentenced to serve 7 years imprisonment. The appellant was aggrieved hence this appeal.

On Appeal the appellant put forward two main ground of appeal viz:-

(i) That the sentence was manifestly excessive.

(ii) That the trial court did not consider the principles of sentencing.

The particulars of the offence are that on the 5th day of March 2008, at G[...] Secondary School in Nyeri District within Central Province, unlawfully killed D.K.K., a person aged 17 years. The facts outlined by the prosecution are that on 5th March 2008 the deceased had gone to inquire the whereabouts of a colleague called W. in the class of the accused. The deceased talked loudly and the accused who was the class prefect asked the deceased to walk out. The deceased is said to have abused the accused telling him he was a son of a bitch. The accused is said to have gone out of his class to follow the deceased whereupon he kicked him along the corridors. The deceased fell down unconscious. The head teacher

took the deceased to hospital where he was pronounced dead. The postmortem report shows that the deceased died as a result of pulmonary arrest due to head injury and trauma.

Having set out the particulars and the facts of the offence, let me now consider the appeal. It is said that the trial magistrate did not consider the principles of sentencing and that the sentence tendered was harsh and excessive. The record shows that the appellant readily pleaded guilty to the offence and that he was a first offender aged between 18½ and 19 years. In his mitigation the appellant appeared to be remorseful in his language. The victims impact statement clearly indicates that the deceased's family were ready to forgive the accused so long as they were informed of the circumstances leading to his death. In an appeal against sentence, it is trite law that an appellate court will not normally interfere with a sentence unless it is shown that the sentencing court did not consider the relevant factors or that it considered irrelevant factors or that the sentence was manifestly excessive. In this case it would appear the learned Senior Principal Magistrate did not consider the appellant's mitigation and the victims impact statement. In the circumstances this court must step in to correct the anomaly.

I have already stated that both the appellant and the deceased were students at G[...] Secondary School aged between 17 and 19 years. They were persons of tender age. The appellant was remorseful, pleaded guilty and was a first offender. Had the trial court considered all the above factors it would have tendered a lesser sentence.

In the circumstances of this case, the sentence of 7 years was a bit harsh to the appellant. I hereby set aside the sentence of 7 years and substitute it with one of 3 years imprisonment. The sentence to run from the date of sentence. The effect of my decision is that the appellant has completed sentence hence he should be set free forthwith unless lawfully held.

Dated and Delivered this 17th day of June 2011

J. K. SERGON

JUDGE

In open court in the presence of Mr. Kiminda for the Appellant and in the presence of Mr. Makura for the State.