



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET
CORAM: F. AZANGALALA J.
CRIMINAL APPEAL NO. 85 OF 2008

BETWEEN
JOEL KIPLAGAT KIPTANUI APPLICANT
AND
REPUBLIC RESPONDENT

*[Being an appeal from the Ruling of the Senior Resident Magistrate –
N. Shiundu dated 24th November, 2008 at Eldoret Chief Magistrate’s
Court in CRC. No. 2520 of 2008]*

JUDGMENT

The appellant, **Joel Kiplagat Kiptanui**, was charged with the offence of manslaughter contrary to section 202 as read with section 205 of the penal Code (Cap.63 Laws of Kenya). It was alleged that on the 6th day of June, 2008 at Chepsemo Village within Keiyo District of the Rift Valley Province, the appellant unlawfully killed Elijah **Kiptanui Chemaiyo**, (hereinafter “**the deceased**”).

The State’s case was that **Lina Kiptoo**, (P.W.3) and **Hellen Kangogo**, (P.W.4) were, on the material afternoon at about 4.30 p.m., in the house of P.W.4 when the appellant entered the house and left the same house through a window. He picked a stick which was near a fence and ran to where the deceased was and hit him. He returned to his homestead after throwing the stick in his farm. The appellant was later apprehended by members of the public including William **Kiptanui Cheptum**, (P.W.6) and **Victor Kosgey**, (P.W.7). **Beatrice Chebiwott Mafuta**, (P.W.2), the Assistant Chief was informed. She in turn informed the Chief of the area and the police. Ag. Inspector **Hamisi Ganzala**, (P.W.8) visited the scene and took the body of the deceased to Moi Teaching and Referral Hospital Mortuary where the postmortem was performed by **Dr. Joseph Imbenzi**, (P.W.11). The doctor opined that the cause of death was severe head injury due to trauma. He produced the post mortem report as PEx.2.

The appellant was re-arrested by police officers of Chepkorio Police Post who handed him over to P.W.8 of Kaptagat Police station. The appellant was later arraigned before the Chief Magistrate’s Court at Eldoret – **N. Shiundu**, then a Senior Resident Magistrate.

The learned Senior Resident Magistrate determined that the prosecution had demonstrated a prima facie case and put the appellant on his defence. He gave an unsworn statement in which he denied the offence of manslaughter. He testified that on the material date, the deceased, who was his father, went to him in

the morning and asked for money. He then went away only to return at about 3.30 p.m. with land issues which the appellant did not approve of. He then started chasing the appellant and intended to hit him with a stick. The appellant held on to the stick and pushed the deceased away.

The learned Senior Resident Magistrate considered all the evidence and concluded that the prosecution had proved its case beyond reasonable doubt and convicted him. In his view, the incident had taken place in broad day light and the appellant was positively identified by witnesses who knew him well.

After considering the appellant's mitigation, the learned Senior Resident Magistrate sentenced the appellant to 15 years imprisonment.

The appellant was not satisfied and has appealed before this court against both conviction and sentence. His main complaints are that he was convicted on the basis of uncorroborated and contradictory evidence. With regard to sentence, he contends that his mitigation was not considered.

When the appeal came up for hearing before me on 19th May, 2011, the appellant, who was unrepresented, abandoned the appeal against conviction and prayed that he be forgiven as he has a large family to care for. **Mr. Chirchir**, the learned Senior State Counsel supported the appellant's conviction and although he submitted that the sentence of 15 years imposed upon the appellant was lawful, he left the appeal against sentence for consideration by the Court.

Having perused the record, I have not found any concern by the learned Senior Resident Magistrate about witness demeanor or lack of candour on the part of any of the prosecution witnesses. **Hellen Kangogo**, (P.W.4) gave straight forward evidence on the attack upon the deceased by the appellant on the material afternoon and her evidence was in all material respects corroborated by **Lina Kiptoo**, (P.W.3) who was in her company at the material time. In her own words:-

“The accused got the stick from the gate to the homestead. I do not know why the accused attacked the deceased ...”

Dr. Joseph Embenzi of Moi Teaching and Referral Hospital produced the postmortem report prepared by **Dr. David Chumba**. The latter had stated as follows in that report:-

“On opening the head, there was an extensive fracture of the skull. It extended from the right to the left of the head. It also involved the base of the skull. There was extensive bleeding in the head and laceration of the brain. The cause of death was severe head injury due to blunt trauma ...”

The injury which caused the death of the deceased was inflicted on the head by a blunt object. That is consistent with the testimonies of P.W.3 and P.W.4. The record further shows that the appellant was arrested almost immediately after he had attacked the deceased. His own testimony in defence indeed placed him at the scene. It also somewhat resonates with the testimonies of P.W.3 and P.W.4.

In my view, the appellant was convicted on sound evidence and I am not surprised that the appellant abandoned his appeal against conviction. The same would have been dismissed in any event.

With regard to sentence, I note that the appellant stated at the trial that he had a large family and also prayed for forgiveness. The learned Senior Resident Magistrate considered the appellant's mitigation before handing down the sentence of 15 years. The appellant has repeated the same before me. I also note that he appreciates the gravity of the offence he committed hence the abandonment of his appeal against conviction. The appellant caused the death of his own father over land which has remained an emotive item in our set up. He will live with that fact for the rest of his life. Given those circumstances, I will interfere with the said sentence. The sentence of 15 years is hereby set aside and I substitute therefore a sentence of imprisonment for ten (10) years from the date of conviction.

Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 16TH DAY OF JUNE 2011.

F. AZANGALALA
JUDGE.

Read in the presence of:-

1. **Joel Kiplagat Kiptanui**, the appellant in person and
2. **Mr. Oluoch**, Senior Deputy Prosecution Counsel for the State.

F. AZANGALALA
JUDGE
16/06/2011.