REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO.10 OF 2006

MICHAEL WAHOME MAINA.....APPELLANT

-versus-

REPUBLIC.....PROSECUTOR

(Appeal from the original conviction and sentence imposed by R. N. Muriuki, Senior Resident Magistrate sitting at Nanyuki in Senior Resident Magistrate's Manslaughter Case No.1 of 2002 delivered on 18th November, 2005).

J U D G M E N T

Michael Wahome Maina, the appellant herein was tried and convicted for the offence of Manslaughter contrary to *Section 202* as read with *Section 205* of the Penal Code. The particulars of the charge are that on 2nd July 2001, at Likii Village in Laikipia District of the Rift Valley Province, he unlawfully killed Juma Esokoni Emiritole. The appellant was sentenced to 14 years imprisonment. Being aggrieved, he preferred this appeal.

In his petition of appeal, the appellant put forward the following grounds:

" 1. That I pleaded not guilty to the charge.

2. That the trial court erred in law by failing to find that the evidence adduced by P.W.1 said that she was only told about the deceased by her neighbour who told her that the deceased was lying on the road in a pool of blood.

3. That the trial court erred in law by failing to consider that P.W.1 only thought of me as the one who killed the deceased because she had seen me at their home asking for her brother (deceased).

4. That the trial court erred in law by failing to find that P.W.6 in his evidence said that I used a knife to stab the deceased of which nothing like a knife or any other object was brought to court as a clear evidence I was the one who killed the deceased.

5. That the trial court erred in law and facts by relying on the evidences of P.W.6 and 7 those evidences were not proved beyond any reasonable doubts because if there was a quarrel between me and the deceased, they could have separated us to prevent the alleged struggle which turned to be a fight.

6. That the trial court erred in law by failing to consider my defence where I had stated where I was that day."

When the appeal came up for hearing, the appellant filed and relied on written submissions. I think it is appropriate at this stage to set out in brief the case that was before the trial court. The prosecution's case was supported by the evidence of 7 witnesses, while the appellant testified alone in his defence without summoning the evidence of independent witnesses. Hadija Esokon (P.W.1) told the trial court that on 2nd July, 2001, she was at home in Likii when the appellant visited and inquired the whereabouts of her brother Juma Esokon (deceased). The appellant is said to have left when P.W.1 told him she had not seen the deceased. P.W.1 said she was later informed by one Peter Maina (P.W.6) that the body of the deceased was seen lying at Gathenje. Peter Maina (P.W.6) stated that he was in his house on 2nd February, 2007 when the appellant arrived and informed him that his shoes were missing and that he suspected the deceased to have stolen them. The appellant is said to have told P.W.6 that he was going to look for the deceased. Later in the day, P.W.6 said he found the deceased and the accused fighting over a shoe while he was on his way to Gathenje. P.W.6 said he saw the accused (appellant) remove a knife, run after the deceased and stab him. The deceased is said to have fallen down and was left lying on the ground. Joseph Nderitu (P.W.7) gave a near similar story to that of P.W.6. Apparently, P.W.7 was with P.W.6. P.W.7 said he witnessed the appellant remove a knife from his jacket and stab the deceased on the chest. Cpl. Timothy Munyi (P.W.4) said he visited the scene where he found the deceased's body lying in a pool of blood with an injury on the chest. P.W.4 is the one who organized for the body to be taken to the mortuary. Dr. Patrick Ochieng (P.W.5) produced the postmortem report in which he formed the opinion that the deceased died as a result of haematorax due to penetrating chest injury. P.W.5 noted that the body had a stab wound in the middle of the chest on the left hand side which extended to the heart piercing it 4 inches deep.

When placed on his defence the appellant gave a sworn statement and denied committing the offence. He claimed he was just framed up. He claimed he was charged with an offence he did not commit. Joseph Runyenje (P.W.2) told the trial court that the accused disappeared from his parent's home after committing the offence. P.W.2 said he managed to have him arrested on 2nd January, 2002 at a friend's house where he had gone to hide.

In his written submissions the appellant argued that the prosecution's witnesses contradicted themselves in regard to the time hence he should have been given the benefit of doubt. The appellant further argued that a crucial witness by the name Mama Dan was not summoned to testify hence the prosecution had something to hide which was unfavourable to their case. The appellant also pointed out that this is a case of mistaken identity because P.W.3 is said to have told the police that the deceased was murdered by one Maina. It is also argued by the appellant that the trial magistrate had failed to take into account the fact that one Simon Macharia had been arrested as a suspect and that his house was even burnt down by the villagers. On the last argument, I have looked at the evidence of P.W.3 and it is obvious that he said he was told his son was stabbed by one Maina. That piece of evidence was obviously hearsay. The appellant did not cross-examine P.W.3 over the issue and in any case the trial court did not rely on P.W.3's evidence to convict the appellant. Mr. Makura, Learned Senior State Counsel opposed the appeal and stated that there was overwhelming evidence of P.W.6 and P.W.7 to sustain a conviction. Mr. Makura further stated that the sentence was not harsh nor excessive. The appellant has alleged that there are contradictory evidence in the testimonies of P.W.1 and P.W.3 regarding time. It is apparent from the record that there exist those contradictions. In my view the contradictions are minor lapses which usually occur in cases involving many witnesses. It is also clear that the appellant's conviction is not based on the evidence of P.W.1 and P.W.3. The appellant took issue with the prosecution's failure to summon the evidence of one Mama Dan. I find the objection to be curious because there is sufficient evidence to sustain a conviction.

After a careful re-evaluation of the evidence, it is now quite clear that the appellant was placed at the scene of crime by the evidence of P.W.6 and P.W.7. P.W.6 clearly stated that he knew the appellant. Both P.W.6 and P.W.7 confirmed that they actually saw the appellant remove a knife and stab the deceased on the chest. Their evidence is consistent and credible. Their evidence is corroborated by the post mortem report produced by P.W.5. I am satisfied that the appellant was properly convicted on sound

evidence.

The appellant was sentenced to 14 years imprisonment. Under *Section 205* of the Penal Code, the offence attracts a maximum sentence of upto life imprisonment. I find the sentence imposed not harsh nor excessive.

In the end, the appeal has no merit. The same is dismissed in its entirety.

Dated and delivered this 2nd day of December, 2011.

J. K. SERGON
JUDGE