



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT EMBU Criminal Appeal 107 of 2008**

**SAVIO MUCHANGI MUTURI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

On 21/7/2005, some young men among them the deceased, the appellant and David Njeru Mugo were playing a game of pool in a room owned by one Kennedy Murimi Mbogo at Kathangariri Market. As they were playing, a tin of powder which was with the appellant is said to have fallen down and it hit the deceased's leg. The deceased confronted the appellant but his friend David Njeru took him outside.

While there, the appellant is said to have followed them and the deceased and appellant started fighting. None of them were armed. They were just using fists. According to David who testified as PW2 in the subordinate court, as the 2 fought, the deceased fell down. He became unconscious and did not get up from the ground. They took them to a nearby clinic where the nurse (PW6) confirmed him dead. The matter was reported to the police station. The deceased's body was taken to Embu District Hospital mortuary to await the post mortem. The appellant was sought and arrested and taken to the police station. Investigations were conducted and he was subsequently charged with the offence of manslaughter. He was tried found guilty and convicted. He was sentenced to serve 7 years imprisonment.

Being aggrieved by the conviction and sentence, he filed this appeal in person. He was later represented by counsel who filed 8 supplementary grounds of appeal. The said grounds are basically very general grounds but one would say that the thrust of the said grounds is to the effect that the conviction was against the weight of the evidence. He has also contested the sentence of 7 years saying that the same was manifestly excessive.

I have perused the original grounds filed by the appellant in person and note that his ground No.9 was to the effect that his constitutional rights were violated as he was kept in custody for more than 24 hours. His counsel did not argue this ground and so the state

counsel did not respond to it. I have nonetheless decided to deal with it lest it is raised later on. From the circumstances of the case, a person had died and the appellant was being held as the prime suspect. At that point in time it may not be possible for the police to decide on whether the suspect would be charged with murder or the lesser charge of manslaughter particularly before the post mortem has been carried out. I do not wish surmise as to why the appellant was not taken to court within 24 hours, but it would appear that he was being held for murder until a decision was made to charge him with the lesser charge before he was brought to court. He was indeed taken to court within 14 days. I therefore find that his rights under section 72(3) of the constitution were not violated.

I have considered all the other grounds. Learned counsel for the state supports both the conviction and the sentence which he says is not excessive. I have the duty to consider the evidence adduced before the trial court which I have analysed briefly in this Judgment and to arrive at my own conclusion as to whether the same was sufficient to support a conviction.

From the evidence adduced before the trial court, PW2 was present when it all happened. He told the court that he went outside with the appellant after the latter had disagreed with the deceased inside the pool room. The deceased had followed them outside and him and the appellant had started fighting using fists. It will be noted that it was as a result of this fight that the deceased fell down and never got up again.

The post mortem revealed that he had died of ***“HYPOVOLEMIA from internal bleeding due to ruptured liver from blunt object injury.”*** A fist is in my view a blunt object and depending on the force used, it can be lethal. There was no evidence that anybody else hit the deceased other than the appellant. His blows must therefore be the ones that ruptured the deceased’s liver. He was not sick before they fought, and he did not survive the fight. He did not even leave the scene on his own and he could not therefore have sustained the injuries elsewhere.

The proximate cause of death was the ruptured liver which was caused by the blows administered by the appellant herein. The appellants defence was a bare denial as rightly found by the learned trial magistrate. I am satisfied that he was placed at the scene by PW2 who was actually his friend and who had no cause whatsoever to fabricate the case against him. The cause of death was properly established, and the person who was responsible for that injury was clearly the appellant herein.

Having reanalyzed the evidence proffered by the state along with the appellant’s defence and grounds of appeal, I am satisfied that the appellant was properly convicted. The charge of manslaughter was proved beyond any reasonable doubt. The learned trial

magistrate's conviction cannot be faulted.

On the sentence, I find the sentence of 7 years after a full trial was not manifestly excessive. I have no cause to interfere with it.

In sum, I find this appeal devoid of merit. I dismiss the same and uphold both conviction and sentence.

**W. KARANJA**

**JUDGE**

Delivered, signed and dated at Embu this 24th day of Feb 2010.

**In presence of:-Mr. Githinji Karuri for Ken and Ms Metiru for state.**