

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
Criminal Appeal 58 of 2007

CHARLES KHISA WANJALA.....APPELLANT
~VRS~
REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant Charles Khisa Wanjala was convicted by Bungoma Principal Magistrate of the offence of manslaughter contrary to section 202 as read with 205 of the Penal Code. He was sentenced to serve thirty years imprisonment. In his petition of appeal, the Appellant does not challenge conviction. He has mitigated for a lenient sentence on grounds that he is sickly of tuberculosis which has greatly weakened his health at the age of 55 years. He is the sole bread winner in his family of eight. It is the Appellant's plea that the four (4) years he has spent in custody be considered because the trial court disregarded it.

The state conceded to the appeal and agreed that the trial court did not take into consideration the four year remand period spent by the Appellant during the trial. Mrs. Leting submitted that although the maximum sentence is life imprisonment, the sentence imposed of 30 years is too harsh.

The Appellant was arraigned in court on 27/10/2003. He had been arrested on 25/11/2002 and the record does not show where the appellant was for about one year before he was arraigned in court. The arresting officer is very clear in his testimony that he arrested the Appellant on 25/11/2002. The court record shows that the plea was taken a year later. I suppose the Appellant was first charged with murder in the High Court and the State later reduced the charge and arraigned him before the magistrate's court. The accused was convicted and sentenced on 20/6/2007 which was after 4 ½ years of incarceration in prison remand. I agree with the state this period ought to have been considered in accordance with the provisions of the law. The sentence of thirty years for a first offender was harsh though not excessive. The Appellant has now served a prison term of about three (3) years plus the 4 ½ years remand period amounting to seven and half (7 ½ years). His health has deteriorated in prison and he now looks very frail. I hereby find the appeal merited and allow it accordingly. The sentence of thirty (30) years is substituted with ten (10) years imprisonment (inclusive of the remand period.) The time starts to run from the 25/11/2002.

F. N. MUCHEMI
JUDGE

Dated, Delivered and Signed in open court this 23rd day of March 2010.
In the presence of the Appellant and the state counsel Mr. Onderi