

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA**

Criminal Appeal 25 of 2008
SAMWEL KIPTOO BOIT.....PLAINTIFF
VERSUS
REPUBLIC.....DEFENDANT

JUDGMENT

The Appellant was jointly charged with his wife of the unlawful killing of the late Samuel Kimaiyo Kiptanui on the 14th day of October 2003 at Kalwal village Tumeiyo sub- location, Chemoibon location of Keiyo District within the Rift Valley Province. They were both found guilty of manslaughter contrary to section 202 of the Penal Code and Sentenced to serve imprisonment for terms of ten (10) years and five (5) years respectively. The Appellant being aggrieved now appeals to this court for a reduction of the sentence. The circumstances that led to the commission of the offence were that the accused persons and others who included the deceased and his wife were partaking of traditional brew at the home of one Michael Chepkeino Kiprop who gave evidence as PW3. At some point the deceased went home and left his wife Salina Chelimo Komeni (PW5) there although he had told her that they go home. However a short time after he left he came back. On seeing him his wife ran into a house in that compound and later ran home. The deceased was armed with a stone. Accused No.2 Dina Jepkorir Kiptoo (wife of the Appellant) intervened and asked the deceased what was wrong. The deceased then turned to Dina (2nd accused) and hit her with the stone he was armed with on her shoulder telling her “even you” meaning that he could also assault her. It was at this point that the Appellant got annoyed/offended and armed himself with a piece of wood with which he hit the deceased twice on his head. The deceased fell down whereupon the 2nd accused set upon the deceased with a stick hitting him on the legs. The deceased was by then bleeding profusely from the head. Michael Kiprop (PW3) separated the deceased and the 2nd accused. PW2 Stephen Kemboi Ruto assisted the deceased to his home from where he was taken to Fluorspar Health Centre for treatment and later he was transferred to Moi Teaching and Referral Hospital Eldoret where he was admitted. He died at 5p.m.the following day from a head injury with a compound fracture of the skull. At trial the Appellant denied the offence saying he was not at the scene of the crime. The 2nd accused said she heard about the death of the deceased three days after his death and she had nothing to do with it. The trial court believed the witnesses who eye-witnessed the incident that led to the death of the deceased and disbelieved the two accused persons and hence their conviction.

It is noted that the accused persons and the deceased were all drunk on the day of the deceased’s death. The Appellant acted in defence of his wife (2nd accused) but it would appear that he used excessive force. In these circumstances the term of imprisonment of 10 years meted out to the Appellant would appear excessive. It is true that an innocent life was lost but the deceased contributed to that crime by directing his anger to the wife of the Appellant instead of his own wife whom he was after armed with a stone for refusing to go home with him. The Appellant was arrested together with his wife by Pw6 the assistant chief of their area on 17/10/2003 and took them to the police at Kaptagat police station. They have been in custody since that time, a period of about six (6) years. They were sentenced on 19/05/2008 so that of the period of six (6) years above one year and eleven months is part of the sentence term. The state concedes the appeal on sentence. My considered view is that in the circumstances of this case a term of ten (10) years imprisonment is really harsh and excessive. Empowered by section 354 (3)(b) of the Criminal Procedure Code I order that the sentence of imprisonment of ten (10) years meted out to the Appellant be reduced to the equivalent of the period he had been in custody during his trial and that he has served sentence. The effect of that order is that the appeal on sentence succeeds and the Appellant is hereby set at liberty forthwith unless he be held for any lawful reason.

Orders accordingly.

DATED SIGNED AND DELIVERRED AT ELDORET THIS 20TH DAY OF MAY 2010.

P.M.MWILU
JUDGE

IN THE PRESENCE OF :-

In person - Appellant

Mr. Kabaka - State counsel for Republic

Andrew Omwenga - Court clerk

P.M.MWILU

JUDGE