



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUNGOMA
Criminal Appeal 111 of 2008**

ALICE NEKESA WANYONYI.....APPELLANT

~VRS~

REPUBLIC.....RESPONDENT

(Appeal arising from BGM CM CR. NO.1960 of 2008)

JUDGMENT

Alice Nekesa Wanyonyi herein referred to as the Appellant was convicted by Bungoma Senior Resident Magistrate of the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code and sentenced to serve seven (7) years imprisonment.

In her petition of appeal, the Appellant challenges both conviction and sentence. The Appellant was convicted on her own plea of guilty on 23.10.2008. The provisions of section 348 of the Criminal Procedure Code bars the Appellant from challenging conviction. It is not in dispute that the Appellant does not raise any issues on how the plea was taken. I agree with the state that the conviction should be left undisturbed. I therefore uphold it accordingly.

On sentence, the court handed in seven (7) years imprisonment to the Appellant. The offence took place on the 3/11/2004 and the arrest was effected immediately. By the time she was convicted, the Appellant had stayed in custody awaiting trial for murder for a period of four (4) years and ten (10) months. The charge was reduced to manslaughter on 22/10/2008. The trial court seems not to have taken into consideration this remand period. The deceased was her husband. In mitigation, the Appellant said that she had been married to the deceased for 27 years and the two had nine surviving children out of eleven (11). Being the only living parent, the court ought to have given a more lenient sentence to enable the Appellant to go home and look after the children who are still under the age of majority.

The Appellant has now served about one and half years. Added to the period in custody of about five years, the period of incarceration translates to six and half (6 ½) years. All the above considered, I set aside the seven (7) years imprisonment and substitute it with six (6) years imprisonment to run from the 4th November, 2004. In effect, the Appellant has fully served and is hereby set at liberty unless otherwise lawfully held.

Dated and delivered on the 17th day of June, 2010
F. N. MUCHEMI
JUDGE.

in the presence of:-
The Appellant

The State Counsel Mrs. Leting.

F. N. MUCHEMI

JUDGE.