



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

**Criminal Appeal 59 of 2009**

*(From original conviction and in Criminal Case No. 290 of 2009 sentence of the Senior Resident Magistrate's Court at Lamu before Hon. A. R Kithinji – SRM)*

**ONESMUS KAMAU KARIUKI .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**JUDGMENT**

Onesmus Kamau Kariuki (the appellant) was convicted on a charge of manslaughter contrary to section 202 Penal code as read with Section 205 of the Penal Code. The appellant pleaded guilty to the charge which stated that on the night of 24<sup>th</sup> and 25<sup>th</sup> April 2009, [particulars withheld] Lamu District, he unlawfully killed F K K.

The facts as narrated to the trial court were that on the night of 24<sup>th</sup> April 2009 the deceased and the appellant went drinking until about 9.00pm when they parted ways.

Later on, that very night, appellant was seen quarreling with the deceased along Lake Amu — Baharini road. On 25-4-09 at 5.00am, the deceased was found lying dead along the same road with his body twisted and naked. Investigations disclosed that appellant had fought the deceased because there were allegations that deceased had an affair with his wife.

A postmortem showed that deceased had sustained a fracture of the vertical vertebra which resulted in his death.

Appellant confirmed the facts as correct saying

***“Facts are correct, I found him sleeping with my wife that’s why I killed him. My wife run (sic) away”***

The trial court was informed that appellant was a first offender.

In mitigation appellant said:

***“I ask to be forgiven. I was provoked when I found him sleeping with my wife. I have two children who depend***

*on me. My parents are dead. I am sorry.”*

The trial court considered his mitigation and circumstances of the offence. Indeed the court observed that it was unfortunate – then sentenced the appellant to 20 years imprisonment.

The appeal is on sentence only.

In his grounds of appeal, appellant urged the court to consider the fact that he committed the offence while under the influence of alcohol and he was incensed by the thought that deceased was having sexual relations with his wife.

He also stated that he is the sole breadwinner for his family as his wife has a physical disability and may not be able to adequately cater for the children of the marriage.

In his written submissions, the appellant states that he had no intention of killing the deceased but thought that his actions of assaulting the deceased would deter the deceased from engaging in sexual relations with his wife and he acted in the heat of passion. Under the circumstances, it is his contention that the sentence is harsh and excessive. He expresses remorse and prays for forgiveness.

The State Counsel Mr. Kemo, conceded that the sentence was rather harsh in view of the circumstances at hand and had no objection to this court interfering with the sentence. I have taken into account the circumstances that led to the appellant acting in the manner he did, - the indignation that his friend was sleeping with his wife and the fact that his action was intended, not to snuff the life out of he deceased, but hopefully to deter any further advances.

In the light of these considerations, then 20 years is rather harsh- he expresses deep remorse and I am persuaded that he deserves a chance to be in the free society sooner than a whole twenty years in waiting. I therefore interfere with the sentence by setting aside the same and substituting it with 15 (fifteen) months imprisonment which shall run from date of conviction.

Delivered and dated this 7<sup>th</sup> day of **July 2010** at Malindi.

**H. A. Omondi**

**LADY JUSTICE**