



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KERICHO
CRIMINAL CASE NO. 25 OF 2009

REPUBLIC
..... **PROSECUTOR**
VERSUS
JOSEPH KIBET ROTICH
..... **ACCUSED**

SENTENCE

Joseph Kibet Rotich, the accused, was on 28th July, 2010 convicted by this court of the offence of manslaughter contrary to **section 202** as read with **Section 205** of the Penal code, **Chapter 63**, of the laws of Kenya following his plea of guilty. He had initially been charged with murder under **section 203** as read with **Section 204** of the Penal code which was reduced to manslaughter.

The particulars of the offence of manslaughter were that on the 4th day of May, 2009 at about 10.00p.m at Kapchanga Trading Centre in Kericho District within the Rift Valley Province unlawfully caused the death of **SAMUEL NGENY** by hitting him on the head with a stone.

The facts constituting the offence of manslaughter which the accused admitted were that the accused was walking home on 4th May, 2009. It was dark. He was followed by people he did not recognize. They started throwing stones at him. He ran for dear life. They followed him to his house. As he ran, he collected and armed himself with a few stones. He managed to get home. But they continued to pursue him and to throw stones at him even when he got home. Whereupon the accused also threw at them stones he had collected hoping to repel them. One of the stones hit Samuel Ngeny. He was severely injured. His colleagues fled leaving him behind. He was assisted by a good Samaritan who took him to Kericho District Hospital. The family of Samuel Ngeny was notified. In the course of investigations, the deceased named the accused as the person who had hit him with a stone.

On 7th May, 2009, the deceased was discharged from hospital but on 12th May, 2009, he fell ill. He was taken to Moi Referral Hospital where he died on 14th May, 2009 while undergoing treatment. Post mortem carried on his body by Dr. Francis Ndirangu revealed that the cause of death was due to the head injury.

The accused through his advocate Mr. Motanya mitigated against sentence and stated that he is 23 years and was a 2nd year undergraduate student at Moi University in 2009 and that he has been traumatized by the incident. Given opportunity, he wishes to return to school and build his life. He is a 7th Day Adventist, said his counsel, and will follow Christian teachings to become a better person. He seeks leniency.

I have duly considered the circumstances in which the offence of manslaughter was committed. Undoubtedly, manslaughter is a serious felony that carries a life sentence. But every case must be viewed in its own context. The accused was lawfully walking home. He was attacked by several people who started stoning him. He ran for dear life. The attackers pursued him to his home. He armed

himself with stones which threw back at the attackers so as to repel them. One of the stones hit the deceased, Samuel Ngeny, who unfortunately later died, hence the charge against the accused. The accused did not know the deceased and it is not known why the deceased and his colleagues pursued and stoned the accused.

In law, one is entitled to protect oneself and one's family as well as one's property. The law recognizes the need and allows the use of reasonable amount of force in self-defence if one believes that the danger of bodily harm is imminent and that force is necessary to avoid the danger. In short, where in self - defence force is necessary and the force used in self -defence is reasonable, one cannot be said to have breached the law. However, self-defence cannot hold good where the use of force is unnecessary to repel an attack if it is used where there is an honest but unreasonable mistake that it is necessary to repel to attack.

In the course of their investigations, the police were informed by the deceased that the latter had seen the accused stone him. But the police failed to establish why the deceased and his colleagues pursued and stoned the accused. They also failed to get the names of the deceased's colleagues. It is clear that the accused was defending himself. Anybody in his shoes would have done the same. It is also clear that the deceased was not acting lawfully when he got injured. He was the author of his own misfortune. The court cannot punish a person for defending himself/herself unless danger is not imminent and the force used is excessive in the circumstances. This is not the case here. It would be wrong to expect that when one is attacked in circumstances that warrant one to defend oneself, one should not use reasonable force to defend oneself. All that the law requires is that reasonable force is used in defending oneself where danger of bodily harm is imminent. The issue of what the force used might result in is not material. It is plain to see that the force used by the accused cannot be said, and there is no evidence to suggest, that it was excessive. The accused pleaded guilty to the charge and in considering the sentence, the court is enjoined to look into the issue of how the offence the accused is convicted of was committed. If there were proper investigations, it would have emerged that the accused caused the death of the deceased while defending himself through use of force which was reasonable in the circumstances. The fact of death of the accused is not the test as to whether there was excessive force. The circumstances of this case clearly show that the accused should not have been charged in the first place.

In the light of the above, I sentence the accused to imprisonment for one day so that he will be released and set free forthwith when the court rises today unless otherwise lawfully held.

DATED at KERICHO this 1st day of November, 2010

G.B.M. KARIUKI,sc
RESIDENT JUDGE

COUNSEL APPEARING

Mr. P. Kiprop State Counsel for the Republic

Mr. Motanya for the accused