

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 132 of 2008

MICHAEL WAGURA MWANGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was convicted on his own plea of guilty to a charge of **manslaughter**, contrary to **section 202, as read with section 205 of the Penal Code**. The particulars of the charge as stated in the charge sheet were that on 23rd April 2003 at Matindiri area in Nyandarua District of the Rift Valley Province the appellant unlawfully killed Mercy Njeri Mwenja.

The appellant had initially been charged with murder in the High Court but the State applied to have the charge substituted with manslaughter to which the accused pleaded not guilty. The case was then remitted to the Chief Magistrate's Court for hearing. Later, after the trial before the lower court had been adjourned and mentioned severally, the appellant pleaded guilty on 9th April 2008. The facts were stated to him by the prosecution and he admitted the same to be true.

Briefly, the facts of the case were that, the appellant, had been living with the deceased as husband and wife in Marmanent. On 20th April 2003 she went to visit her parents and had not returned by the 22nd April 2003. The appellant pursued her to her parents where he found she had gone to the market. He went after her and the two drunk beer together. When she rose to leave, the appellant insisted on going with her, despite those around warning her not to leave alone with the appellant. The two however left with the appellant holding the deceased's hand. The following day the appellant was spotted carrying the deceased on a wheelbarrow. On being questioned he said that she had labour pains. He took her to Karagita Dispensary where she died before being attended to. The appellant refused a suggestion that the Police be informed and insisted that the body be placed in the mortuary secretly. The hospital management informed the Police who proceeded to arrest the appellant. A post-mortem conducted on the body revealed that the cause of death was head injury, massive subdural haematoma leading to cardio pulmonary arrest. After investigations the appellant was charged with the murder of the deceased which was later reduced to manslaughter.

In mitigation the appellant asked for a sentence which he would complete, "*go home, become disciplined and work for (the) country*". The learned trial magistrate ordered for a probation officer's report (*victim assessment statement*) which she considered alongside the appellant's mitigation statement. Finding the report unfavourable for a non-custodial sentence and observing that the appellant was not remorseful, the learned trial magistrate proceeded to sentence the appellant to 15 years imprisonment. In doing so she considered the fact that the offence of manslaughter carries a maximum sentence of life imprisonment. She also took into account the time the appellant was in custody awaiting the finalization of his trial.

The appellant's appeal is in the nature of mitigation. He asks only that this court exercises leniency and accords him a non-custodial sentence. He now says he is remorseful. Considering the facts of the case, as well as the probation report which I have also carefully read, I find no reasons to interfere with the trial court's decision as regards the sentence. There is nothing to suggest that the learned trial magistrate exercised her discretion wrongly to warrant this court's interference. That being the case I have no option but to dismiss the appeal which I hereby do.

Dated, signed and delivered at Nakuru this 24th day of July, 2009

M. G. MUGO

JUDGE

In the presence of:

N/A for State

Appellant present in personx