



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
CRIMINAL APPEAL 126 OF 2003

DIONISIO NJERU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

Criminal Appeal No. 126 of 2003 was filed by Dionisio Njeru arising from Criminal conviction *in Criminal Case No. 2901 of 2002 in Senior Principal Magistrate's Court at Embu.*

The appeal argued then on the appointed dated was No.126/2003 regarding Dionisio Njeru. When the appellant was called upon to address the court he said “**I rely on the grounds of appeal and has nothing to add**”. His grounds set out in the petition of appeal are that

1. the deed occurred under the influence of alcoholic beverages beyond his control and he is very remorseful.
2. I promise to keep off alcohol to abide fully with the laws of the country
3. That I have large family to cater for and my imprisonment will impede their progress.
4. That my health is falling.

Prayer for acquittal or an option of non custodial sentence. These grounds are all in mitigation and admission that the incident occurred while under the influence of drink. The appellant does not challenge the validity of the Judgment of Trial Magistrate. The State Counsel opposed the appeal and submitted that sentence of 5 years is within the law. The maximum sentence prescribed under section 205 Penal Code is life imprisonment. I have considered the record and the grounds of appeal set out by the Appellant. These are grounds which he should have given to the Trial Magistrate in mitigation. But he pleaded for leniency since he had stayed in custody for long.

It is my finding the trial Magistrate took into the consideration of all mitigation to reach the sentence of 5 years imprisonment for the offence of manslaughter. Considering life of another person was lost the sentence of 5 years imprisonment is not excessive for this offence. I consider it lenient and I do not see any reason to interfere.

This appeal has no merit and the same is hereby dismissed.

Dated this 1st March, 2007.

J. N. KHAMINWA

JUDGE

1/3/2007

Khaminwa – Judge

Njue Clerk

Mr. Kimathi for State

Appellant present in person.

Judgment read in open court.

J. N. KHAMINWA