

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

CRIMINAL APPEAL 269 OF 2002

LAWRENCE MWENDA MWOMBOBIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant Lawrence Mwenda Mwombobia is aggrieved by his conviction and the sentence of 7 years imposed upon him by the Senior Resident Magistrate Nyeri for the offence of manslaughter contrary to section 202 of the Penal Code. The appellant has preferred 5 grounds of appeal. Basically he contends that the offence was accidental and not intentional and that the trial magistrate ought to have accepted his defence and acquitted him. The appellant also maintains that the sentence imposed upon him was harsh.

The evidence adduced before the trial magistrate was briefly as follows: The deceased and Appellant are brothers. On the night of 26th August 2000 at about 9.00 p.m., the deceased and Appellant arrived at their homestead. The deceased knocked at his mother's house. His mother Margaret Nyegeera (P.W.2) gave the deceased keys to his house and the deceased walked away towards his house. P.W.2 and her husband Paul Mwobia (P.W.1) then heard the deceased asking the Appellant why he wanted to kill him. On coming out of the house the two found the deceased and the Appellant struggling for a knife.

The two separated the Appellant and the deceased and it was then that they realized that the deceased had been stabbed on the chest. They recovered the knife which they identified as belonging to the deceased. The matter was reported to P.C. Kenneth Mwenje (P.W.4) an officer attached to Naru Moru Police Station who proceeded to the scene and arrested the Appellant subsequently P.W.4 arranged for officers from the scenes of crime to stake photographs of the body of the deceased and these were produced in evidence.

On 30.8.2000 Dr. Jackson Macharia (P.W.3) of Nanyuki District Hospital performed a post mortem examination on the body of the deceased and found a stab wound on the 5th & 4th rib. He formed the opinion that the cause of death was cardio pulmonary arrest secondary to excessive haemorrhage secondary to the perforation of the heart. P.W.3 also examined the Appellant and found him to be mentally and physically fit.

The defence of the Appellant which was contained in his sworn statement was that he was coming back home with the deceased from a drinking spree. The deceased who was drunk was carrying a knife and Appellant asked the deceased to handover the knife to the Appellant. As the deceased was handing over the knife the deceased fell into a trench and was injured. The deceased then died whilst awaiting to be taken to Hospital. From the evidence adduced by P.W.1 and P.W.2. It is clear that the knife belonged to the deceased.

Although the witnesses are not agreed on whether the Appellant was the one holding the knife or whether both the deceased and the Appellant were holding the knife together, it is evident that the two witnesses found the deceased and the Appellant embroiled in a struggle and that the two witnesses are the ones who separated them. This clearly negates the Appellant's defence that the deceased accidentally fell down. Moreover, both witnesses heard noise and the deceased ask the Appellant why he wanted to kill him. Indeed this is what made the witnesses go out of the house to find out what was going on.

I find that there was sufficient evidence to prove that the Appellant did struggle with the deceased and that he is the one who stabbed the deceased with a knife. There was no evidence that the action of the Appellant was premeditated but that was precisely the reason why he was charged with manslaughter and not murder. I note that the photographs of the body of the deceased were irregularly produced but this was not of any significance as there was therefore sufficient evidence to prove the guilt of the Appellant even without the photographs. The conviction was therefore safe. As for the sentence, a life was lost, the maximum sentence is life imprisonment. The sentence of 7 years was therefore not harsh or manifestly excessive as to warrant the intervention of this court. I therefore find no merit in this appeal and do dismiss it in its entirety.

Dated signed and delivered this 20th day of June 2005.

H. M. OKWENGU

JUDGE