REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 368 of 2003

[From original conviction and sentence of criminal case no.1383 of 2002 of the

Senior Resident Magistrate's Court at Molo – R.K. KIRUI – SRM]

JOSEPH CHERUIYOT CHELULE……...…….APPELLANT

VERSUS

REPUBLIC……RESPONDENT

JUDGMENT

The appellant, Josphat Cheruiyot Chelule, was charged with the offence of manslaughter contrary to **section 202** of the **Penal Code.** The particulars of the offence were that on the 27th of January, 2001 at Mwae village, Nyota Farm, Nakuru District, the appellant jointly with others not before court unlawfully killed Kipketer Arap Baraka (hereafter referred to as the deceased). The appellant pleaded not guilty to the charge. After a full trial, the appellant was convicted as charged. He was sentences to serve ten years imprisonment. The appellant was aggrieved by his sentencing and duly filed an appeal to this court.

In his petition of appeal, the appellant faulted the trial magistrate for sentencing him to too harsh a custodial sentence considering the fact that the appellant had been injured during the incident that led to the death of the deceased. The appellant urged the court to reconsider the circumstances of the case, especially the fact that the appellant was intoxicated when he committed the offence and according reduce the custodial sentence of ten years imposed on him. At the hearing of the appeal, the appellant basically reiterated his grounds of appeal. He told the court that he was remorseful and further that he had learnt from his mistake. He had also learned a trade (i.e carpentry) while in prison and was therefore ready to be a useful member of the society. He urged the court to consider reducing the sentence of ten years imposed on him to an appropriate lower sentence. Mr. Koech, on behalf of the State, left the issue of sentencing to the court.

I have carefully considered the circumstances under which the deceased met his death. The appellant told the lower court that he did not know the deceased prior to fatally injuring him. From the evidence adduced by the witnesses in the trial court and also the appellant's own evidence, it is evident that there was no grudge or any reason for the appellant to have killed the deceased. The fatal attack appears to have been random and unpremeditated especially considering the fact that the appellant at the time was intoxicated. I agree with the appellant that the sentence meted on him was harsh in the circumstances of the case. The appellant lacked the requisite mens rea to attract such a harsh sentence. Since the appellant has all along admitted having unintentionally killed the deceased, and had not sought to appeal against his conviction, it is my view that the appellant's appeal on sentence has merit.

In the circumstances therefore, the sentence of ten years imprisonment imposed by the trial magistrate is hereby set aside and substituted by an appropriate sentence of this court. The appellant is sentenced to serve five years imprisonment. The said imprisonment term ordered shall take effect from the 24th of July, 2003 when the appellant was convicted and sentenced by the trial magistrate.

It is so ordered.

DATED at NAKURU this 29th day of July, 2005.

L. KIMARU

JUDGE