

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI

Criminal Appeal 164 of 2003
**(From the Original Conviction and Sentence in Criminal Case Number 221 of 2002 in
the Senior Principal Magistrate's Court at Murang'a by F. F. Wanjiku – S.P.M.)**

ALLAN MUHORO KAMENJU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Allan Muhoro Kamenju (*hereinafter referred to as the Appellant*) was tried and convicted by the Senior Principal Magistrate Murang'a for the offence of manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code. He was sentenced to serve 10 years imprisonment. Being aggrieved He has now brought this appeal contending *inter alia* that the trial magistrate erred in not considering his defence that He was only acting in self defence, and that he failed to weigh all the evidence as a whole.

The appellant was alleged to have unlawfully caused the death of his sister Mary Wanjiku Wambugu (*hereinafter referred to as the deceased*). There were 4 material witnesses who were present around the time the assault took place. These were P.W.1, P.W.2, P.W.3 and P.W.4. Among these witnesses only P.W.2 Mary Muthoni Gathumbi actually testified to have seen the appellant assaulting the deceased. According to P.W.2 the appellant was using a stick. But the evidence of this witness was not consistent with that of P.C. Evans Machuki (P.W.6) who recovered a blood stained axe from the house of the appellant. Further, although the witness testified that the exhibits were taken for analysis, no report was produced.

In his defence the appellant however adopted his statement under inquiry. In that statement the appellant claimed that the deceased suffered her injuries accidentally when the appellant was trying to disarm her. According to the appellant the deceased was the aggressor and He was merely trying to defend himself.

It is obvious that none of the prosecution witnesses could testify as to how the dispute arose nor could they swear positively as to who was the aggressor. The trial magistrate accepted part of the defence evidence that the appellant used the axe but rejected the rest of the defence. I find that there was no justification for this selective application. Be that as it may the evidence is clear that the death of the deceased arose from the injury inflicted upon her by the appellant. The appellant's conviction was therefore proper as there was enough evidence to support the charge.

As regards the sentence, it is true that a life was lost. However in the circumstances of this case the sentence of 10 years imprisonment was manifestly excessive. I would accordingly reduce the same to 6 years imprisonment.

The upshot of the above is that the appeal against conviction is dismissed. The appeal against sentence is allowed to the extent of the sentence being reduced to 6 years imprisonment.

Those shall be the orders of this court.

Dated, signed and delivered this 6th day of December 2005.

H. M. OKWENGU

JUDGE