

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO. 68 OF 2004

(From Original Conviction and Sentence in Criminal Case No. 99 of 2004 of the Senior Resident Magistrate's Court at Kilifi P.M. Mutani Esq., SRM)

CHENGO KARISA BIGA APPELLANT

-Versus -

REPUBLIC RESPONDENT

J U D G M E N T

The Appellant was on his own plea of guilty to a charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code convicted and sentenced to 6 years imprisonment. He has appealed against the sentence and listed six grounds including the ones that he was a first offender, that he is the bread winner of his family, that he did not kill the deceased intentionally and that the sentence of six years imprisonment is harsh.

In his written submissions the Appellant stated that he had only one sibling, the deceased. He stabbed and killed the deceased after a quarrel following a drinking spree. He is remorseful and prays that the appeal be allowed so that he can go home and take care of his family and even that of the deceased.

Mr. Monda, learned State Counsel opposed the appeal arguing that the offence carries a life sentence hence a sentence of six years imprisonment cannot be said to be harsh.

I have considered these rival submissions. It is not in dispute that the Appellant and the deceased quarrelled when on their way home after a drinking spree. The Appellant pleaded guilty to the charge of manslaughter and has stated that he had no intention of killing his own brother and he is therefore remorseful. Having been incarcerated for now nearly two years and given the peculiar circumstances of this case I think the Appellant has been punished enough. I therefore allow this appeal by reducing the sentence of six years imprisonment to the period ending today and order that the Appellant shall be set free forthwith unless otherwise lawfully held.

DATED and delivered this 9th day of November 2004.

D.K. Maraga

Ag. JUDGE