

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL. NO.114 OF 2000

**(Being an appeal from Original Conviction and Sentence in Criminal Case
No.1561 of 1999**

JULIUS MUTHANGA MALUKI APPELLANT

VERSUS

RESPONDENT RESPONDENT

The Appellant was tried on a charge of manslaughter contrary to Section 202 as read with Section 205 of Penal Code.

The prosecution evidence is based on retracted statement of the Appellant made under inquiry. There was no other evidence of what happened except on how deceased died after falling in the toilet hole (latrine).

The trial magistrate conducted a trial within trial and came to the conclusion that that the Appellant's statement was admissible. I agree with his finding in this regard.

The only objection the Appellant raised is that it was not his statement. He said the statement he had made was written in Kikamba language, but he admitted the statement that was produced was signed by him. The trial Magistrate relied entirely on this statement when convicting the appellant. At the hearing of this appeal the Appellant abandoned his ground of appeal and concentrated in pleading that the sentence be reduced as he is always sick in jail and that he was defending himself when the incident occurred. He pleaded that he wished to be free to look after his seven children. It is to be noted that in his grounds of appeal ground 4 he states "the deceased died after some few days after the fight -----" There is no doubt then that he was well aware of the acts that caused the death of the deceased. He even said he was defending himself.

In the circumstances then the Trial Magistrate was right in convicting on the evidence of the statement produced by the prosecution.

On the issue of sentence the Appellant was sentenced to 6 years imprisonment. There are mitigating factors. The Appellant had been in custody for 2 years and has now been in jail for 4 years. He was a first offender and he appeared remorseful to the trial court. Although the learned Magistrate was of the view that the appellant shortened the life of the deceased on flimsy grounds, it is to be noted that he had no intention to cause death. The circumstances as narrated by him do not show that he had thought death would occur and he says his goods were lost while in the hands of the deceased. The other factor is that his health seems to be deteriorating. He says he is always sick in jail and he looks to me frail. I am of the view that considering the circumstances of this case a sentence of 6 years imprisonment is excessive. A more lenient sentence is called for. I therefore set aside the sentence of 6 years imprisonment and substitute with one of 2 ½ years from the date of conviction.

The appeal is therefore allowed to that extent.

Dated at Mombasa this 13th Day of March, 2002.

J. KHAMINWA

COMMISSIONER OF ASSIZE