



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT MOMBASA**  
**APPELLATE SIDE**  
**CRIMINAL APPEAL NO. 518 OF 2000**

(From Original Conviction and Sentence in Criminal Case No. 1196 of 1998  
of the Senior Resident Magistrate's Court at Voi - J.S.. MUSHELLE – SPM)

**MICHAEL MWAKIO MBOGHO .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**J U D G E M E N T**

In this appeal, the appellant had filed 5 grounds of appeal namely:

1. That the magistrate erred in law and in fact by handling this case; because the magistrate had handled and rendered a biased judgement in another case against him.
2. That the trial magistrate erred by convicting him on an uncorroborated evidence of PW1 and PW2.
3. That the trial magistrate erred in law and fact by considering the evidence of a minor who was coached.
4. That the trial magistrate erred in fact and law by considering the evidence of PW1 which was full of discrepancies in his evidence in chief and under cross examination.
5. That the six (6) years imprisonment is harsh, considering the above points especially what culminated over fight with the deceased.

When the hearing of this appeal commenced, the appellant pleaded with court to allow him abandon the 1st, 2nd, 3rd and 4th grounds of appeal and leave the 5th ground for submission. In effect the appeal now is against sentence only.

Miss Mwaniki appearing for Republic, while not objecting to the withdrawal of the 4 grounds however supported the sentence of 6 years. It was not harsh considering that the sentence provided under the Penal Code is Life Imprisonment.

The appellant was charged before the Senior Resident Magistrate, Voi with the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The particulars of the offence are that on the 15th day of May, 1998 at about 6.00pm at Maarinyi Village in Chawia Location within Taita District of the Coast Province, unlawfully killed DAVID MWANORI MWASARU.

The facts briefly stated are that the appellant was seen by PW1, PW2 and PW3 assaulting the deceased by kicking the deceased who was lying on the ground, in the ribs. The appellant had a panga in his hands. When the villagers were called and rushed to the scene, they found the deceased dead. The victim was an elderly man. The appellant then disappeared. The police were informed and the appellant was not found until 1-12-98 when he was taken to custody and thereafter charged with the offence.

The post mortem was carried out by Dr. Mbinga of Wesu Hospital and a report submitted and admitted as Exh.1: The report showed that the deceased was about 70 years of age had died as a result of multiple injuries on the head, chest and abdomen. He had:

- a bruise on the left ear 2 cm long**
- two cuts on the left ear hole both 2 cm long**
- cut on the scalp 3cmx 2cm x ½ cm**
- there were fractures on right side from rib 1 to rib 5**
- on the left rib 1-9 were fractured**
- there was haemothorax on the left side.**

In his unsworn defence statement, the appellant said that the deceased had picked up a quarrel with him when they met on the way and when he pushed him, the deceased fell down and when the neighbours came they told the appellant to go away.

The learned Senior Resident Magistrate, convicted him and sentenced him to a term of 6 years in prison. His appeal now is against sentence only having abandoned all other grounds, as stated earlier. In sentencing him the court observed that the appellant did not express remorse and said nothing in mitigation.

The offence was serious and brutal. The deceased was an old man who ought to have been respected by the appellant in the African tradition of giving respect to the elders. The appellant should not have started a physical confrontation with the deceased. The sentence is not excessive nor harsh. The appeal against sentence is dismissed.

It has no merit and the sentence passed by the lower court is upheld.

**DATED AND DELIVERED THIS.....DAY OF.....2002.**

**L. P. OUNA**

**JUDGE**