

IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE

CRIMINAL APPEAL NO. 94 OF 2000

(From the Original Conviction and Sentence in Criminal Case No. 827 of 2000 of the Senior Principal Magistrate's Court at Machakos: S.M.S. Soita Esq.: on 17.4.2000)

10 JOHN MUSAU KIOKO ::: APPELLANT

VERSUS

REPUBLIC ::: RESPONDENT

Coram: J. W. Mwera J.
Appellant not wishing to be present
Orinda State Counsel for Respondent
C.C. Muli

J U D G E M E N T

The appellant was charged under S.205 Penal Code, the latter punishment section was not set out in the charge sheet, but no matter, that on 12.10.99 at Isyukoni market, Machakos he unlawfully caused the death of one Simon Ngei Kamwilu. He pleaded guilty and got ten (10) years imprisonment. He appealed the sentence as being too harsh and excessive. The appellant had desired to be present at the trial of his appeal but he did not show up when he was notified that that could be at his own expense.

At the hearing the Learned State Counsel observed that the facts reproduced before the lower court constituted the charge laid but added that the prison term appeared to have been on the higher side.

The facts of the case were that the deceased and the accused picked a quarrel at their place of work, a certain eating house at Isyukoni market when the former claimed that the latter was wearing his shoes. The deceased hit the accused first who in turn took a piece of wood and struck a deceased twice on the head. The deceased fell down and 10 passed out. He died in hospital and post mortem report revealed that he died of internal bleeding because of the head injury – that the accused inflicted. The accused was treated as a first offender. He pleaded that the deceased was his close friend whom he even visited in hospital after he was admitted there.

Having heard all that the Learned Trial Magistrate gave the 10 – year term imprisonment now the subject of this appeal. Under S.265 Penal Code conviction of manslaughter carries a life sentence. The appellant got ten years. That was lawful. He had been in remand for 6 months only. However considering the circumstances of the case this court is minded to consider that ends of justice will still be served even with the 20 lower court sentence being varied. Accordingly it is set aside and substituted with one of three (3) years imprisonment.

Save for the varied sentence the appeal is dismissed.

Judgement accordingly.

Delivered on 13th March 2001.

J. W. MWERA

JUDGE