

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CORAM: D.S MAJANJA J.

CRIMINAL APPEAL NO. 40 OF 2019

PETER OMBATIAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. S.N Makila – SRM dated 17th May 2017 at the Chief Magistrate’s Court at Kisii in Criminal Case No. 311 of 2017)

JUDGMENT

1. This is an appeal regarding sentence only as the appellant, **PETER OMBATI**, pleaded guilty for the offence of manslaughter contrary to section 202 of the Penal Code (Chapter 63 of the Laws of Kenya). The charge against him was that on 2nd February 2017 at Bomariba Location in Kisii South Sub-County, by an unlawful act he caused the death of Winfrida Bosibori. He was sentenced to serve 7 years’ imprisonment.

2. Since this is an appeal on sentence, the court’s jurisdiction to review the sentence is circumscribed. It has jurisdiction to interfere with a sentence imposed by the trial court if it is satisfied that in arriving at the sentence, the trial court did not take into account a relevant factor or that it took into account an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive (see **Wanjema v Republic [1971] EA 493**).

3. The facts of the case accepted by the appellant were that on the evening of 2nd February 2017 after drinking at a local changaa den he went home and the deceased, who was his step mother and who was also drunk, insulted him. He picked a jembe and threw it at her causing her to sustain a ruptured spleen which led to her death.

4. Before sentencing the trial magistrate ordered a Sentencing Review report which showed that he had been assaulting the deceased in the past and she had sustained serious injuries including loss of her teeth. He had also been threatening his sisters if they revealed what he had been doing to the mother. The report also painted the appellant as a serial offender who would cause harm if released on a non-custodial sentence.

5. The trial magistrate reviewed the report and considered that although the appellant was young, aged 27 years, and remorseful, a custodial sentence of 7 years’ imprisonment was deserved in the circumstances.

6. I find that the trial court considered all the circumstances and the sentence imposed is in line with sentences imposed by this court for the offence of manslaughter. I do not find any reason to interfere with an otherwise lawful sentence.

7. The appeal is dismissed.

Dated and delivered at Kisii this 20th day of May 2019.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.