



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**CRIMINAL APPEAL NO. 137 OF 2015**

**EVANS KIPTOO KOECH.....APPELLANT**

**VERSUS**

**REPUBLIC.....DEFENDANT**

*(Being an appeal from the original conviction and sentence in Criminal Case No. 1008 of 2015*

*at the Principal Magistrate's Court, Iten (Hon. H.M. Nyaberi, PM) dated 2 October 2015)*

**JUDGMENT**

[1] This is an appeal against the ten-year sentence imposed on the Appellant by the Principal Magistrate's Court in **Iten SPM's Criminal Case No. 1008 of 2015**. The Appellant, **Evans Kiptoo Koech**, had been charged with the offence of manslaughter, contrary to **Section 202** as read with **Section 205** of the **Penal Code, Chapter 63** of the **Laws of Kenya**. The particulars were that on the **14<sup>th</sup> day of July 2015** at Kapsowar Trading Centre within Elgeyo Marakwet County, he unlawfully killed **Jeremiah Chemeitoi Kipkoech**.

[2] The Appellant was arraigned before the court of the Principal Magistrate on **28 July 2015**; and the record of the lower court shows that he admitted the Charge as well as the facts in support of the Charge. He was accordingly convicted on his own Plea of Guilty and sentenced to imprisonment for 10 years on **2 October 2015**. Being aggrieved by the sentence, the Appellant promptly lodged this appeal on **15 October 2015**, raising the following grounds:

- [a] That he pleaded guilty to the Charge;
- [b] That he was a first offender and was remorseful;
- [c] The he was then a young man who was attending school;

His prayer, therefore, was for his appeal to be allowed and the sentence reduced.

[3] The appeal was urged by way of written submissions filed herein on **26 November 2018**. The Appellant reiterated his posturing that he pleaded guilty to the Charge of manslaughter because he was driven by remorse; knowing that he had no intention whatsoever to kill the deceased. He further submitted that he comes from a humble background and has never been involved in any criminal activities. In urging for sentence-reduction, the Appellant pointed out that he has spent a considerable period of time in custody during which he has reformed and acquired skills which, if released, will help him fend for himself in the society.

[4] The appeal was opposed by Learned Counsel for the State, **Mr. Mulamula**. He pointed out that the lower court called for a Probation Officer's Report and took into account the contents thereof, especially the mitigating circumstances set out in the report, in passing the sentence of 10 years on the Appellant. According to him, the sentence was fair granted the penalty provided for under **Section 205** of the **Penal Code** for the offence of manslaughter, which is life imprisonment. Consequently, Counsel prayed for the dismissal of the appeal.

[5] I have carefully considered the appeal, the grounds relied on by the Appellant as well as the submissions made herein in respect thereof. From the record of the lower court, it is manifest that the Appellant pleaded guilty to the offence with which he was charged; and therefore, although in his Petition of Appeal he stated that the appeal is against conviction and sentence, his appeal is deemed to target the sentence only. Indeed, **Section 348** of the **Criminal Procedure Code, Chapter 75** of the **Laws of Kenya** is explicit that:

**“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by**

a subordinate court, except as to the extent and legality of the sentence.”

[6] Hence, in the case of Olel v Republic [1989] KLR 444, the multiple bench of the Court held that:

**“Having considered the submissions by both learned counsel on the interpretation of section 348 ... we have come to the conclusion that where the plea is clearly an unequivocal plea of guilty, an appeal against conviction cannot lie. The section itself is quite clear on that and permits of no confusion or difficulty in its interpretation. It does not merely limit the right of appeal but bars it completely in cases of an unequivocal plea of guilt. That is the fact of what the marginal note also states...”**

[7] Having analyzed the record of the lower court as indicated herein above, there can be no controversy that the plea was unequivocal; for the plea taking process was done strictly in accordance with the formula laid down in Adan vs. Republic[1973] EA 446 by Spry, V.P. that:

***“When a person is charged, the charge and the particulars should be read out to him, so far as possible in his own language, but if that is not possible, then in a language which he can speak and understand. The magistrate should then explain to the accused person all the essential ingredients of the offence charged. If the accused then admits all those essential elements, the magistrate should record what the accused has said, as nearly as possible in his own words, and then formally enter a plea of guilty. The magistrate should next ask the prosecutor to state the facts of the alleged offence and, when the statement is complete, should give the accused an opportunity to dispute or explain the facts or to add any relevant facts. If the accused does not agree with the statement of facts or asserts additional facts which, if true, might raise a question as to his guilt, the magistrate should record a change of plea to "not guilty" and proceed to hold a trial. If the accused does not deny the alleged facts in any material respect, the magistrate should record a conviction and proceed to hear any further facts relevant to sentence. The statement of facts and the accused's reply must of course be recorded.”***

[8] The lower court record shows that when the Appellant's plea was taken on **28 July 2015**, he was present in court and that the Charge was read over to him in Kiswahili language; and that his response thereto was taken down in Kiswahili language. The facts were then furnished by **Mr. Chelashaw**, Learned Counsel for the State; and again, the Appellant admitted those facts to be correct. Thereupon he was convicted on his own plea of guilty. He was then afforded an opportunity to address the court in mitigation; after which the Learned Magistrate called for a Probation Officer's Report. When the report was availed on **1 October 2015**, the lower court used the contents thereof to inform his decision to sentence the Appellant to 10 years' imprisonment.

[9] Accordingly, I am satisfied that the sentence imposed on the Appellant was well considered. I find no reason to interfere with it. In the result, I find no merit in the appeal and would accordingly dismiss it.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 7<sup>TH</sup> DAY OF JUNE 2019**

**OLGA SEWE**

**JUDGE**