REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MARSABIT

CRIMINAL APPEAL NO.23 OF 2016

SAMUEL LETIGISHO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in criminal case No. 83 of 2016 of the Principal Magistrate's Court at Marsabit by Hon. B.M Ombewa – Senior Resident Magistrate)

JUDGMENT

SAMUEL LETIGISHO, the appellant was convicted for the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.

The particulars of the offence were that on 26th May 2012 at **Manyatta Ndikir** village of Laisamis within Marsabit County, unlawfully killed **SAMUEL SARUNI BUROYA**.

He was sentenced to life imprisonment. He has appealed against both conviction and sentence.

The appellant was in person. He raised the following grounds of appeal:

1.That he was denied the services of an interpreter.

2.That the learned trial magistrate erred in law and in fact by convicting him on insufficient evidence.

3. That the learned trial magistrate erred in law and in fact by meting out a harsh sentence.

The state opposed the appeal through Mr. Kibet, the learned counsel.

The facts of the prosecution case were briefly as follows:

In may 2012, the appellant and two others were from Manyatta Lengima. after the deceased and the appellant differed over some Kshs.2000/=,The appellant cut the deceased. He apparently succumbed and his body was eaten by wild animals.

Though the appellant admitted having been with the deceased at the Manyatta Lengima, he denied to have killed him. He contended that they parted ways and he (appellant) went to Rumuruti while the deceased went to his home.

This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **OKENO Vs. REPUBLIC 1972 EA 32.**

Interpretation in court is offered for any party who cannot be able to follow the proceedings either in English or Kiswahili. Every accused person is entitled to a fair hearing and this includes the free services of an interpreter. Article 50 (2)(m) of the constitution provides as follows:

> ***Every accused person has the right to a fair trial, which***
>
> ***includes the right—***
>
> ***...***
>
> ***...***
>
> ***...***
>
> ***(m)to have the assistance of an interpreter without payment***
>
> ***if the accused person cannot understand the language used***
>
> ***at the trial;***

My perusal of the record indicate that the plea was taken in Kiswahili. On 1.3.2016 the appellant informed the court that he understood Kiswahili.

All witnesses except Doctor Mwanzia (P.W 5) testified in Kiswahili. In his defence the appellant likewise testified in Kiswahili. It was therefore unnecessary for him to be provided with an interpreter probably to do interpretation to his mother tongue.

The appellant contended that the trial court did not have sufficient evidence to convict him. In his evidence Julius Mbono Esimasile (P.W 2) testified that in July 2012 some three donkey traders requested to camp in his homestead. He allowed them and since his nephew had been killed by donkey traders, he went and reported to the police the following morning. when he returned with police officers, the appellant ran away. The other two were arrested. One of the traders arrested was Kiprono Lekutano (P.W 3). This witness testified that in May 2012, he was with the appellant and one Boroya. He was walking behind the two. He heard a person shout that he was being killed. He went and found the deceased lying down having been cut. The appellant warned him not to report the issue or else he was going to kill his mother. He (P.W 3) went to Wamba and the appellant followed him there and continued to issue threats to him.

This witness (P.W3) testified on the manner the deceased was dressed on that particular day. This tallied with the evidence of the clothes that were recovered. His evidence was unshaken during cross examination.

In the case of **KIILU & ANOTHER V. REPUBLIC [2005] 1 KLR 174** the court of appeal, held -

> ***Subject to certain well known exceptions, <u>it is trite law that a fact may be proved by testimony of a single witness</u> but this rule does not lessen the need for testing with the greatest care the evidence of a single witness respecting identification, especially when it is known that the conditions favouring a correct identification were difficult. In such circumstances, what is needed is other evidence, whether it be circumstantial or direct, pointing to guilt, from which a Judge or jury can reasonably conclude that the evidence of identification, although based on the testimony of a single witness, can safely be accepted as free from the probability of error.***

In the instant case the issue of identification does not arise for Kiprono Lekutano (P.W 3) and the appellant were not only trading together, but had grown up together. There is nothing on record that makes his evidence doubtful. The learned trial magistrate was right in believing him.

The appellant informed the court that he was 28 years old. There is evidence on record that the two had disagreed over some money. We may not know what exactly transpired before the deceased was fatally attacked. I am therefore persuaded to reduce the sentence to 20 years imprisonment. to that extent the appeal succeed.

DATED at Marsabit this 8th day of March, 2017

KIARIE WAWERU KIARIE

JUDGE