



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.8 OF 2013**

*(An Appeal arising out of the conviction and sentence of J.W. ONCHURU - PM delivered on 7<sup>th</sup> January 2013 in Kiambu CMC. CR. Case No.3057 of 2012)*

**STEPHEN KARANJA MURAGURI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant, Stephen Karanja Muraguri was charged with **committing manslaughter** contrary to **Section 202** as read with **Section 205** of the **Penal Code**. The particulars of the offence were that on 15<sup>th</sup> October 2012 at Banana Township in Kiambu County, jointly with others not before court, the Appellant unlawfully killed Moses Kamoshe Njuguna. When the Appellant was arraigned before the trial magistrate's court, he pleaded guilty to the charge. He was convicted on his own plea of guilty and sentenced to serve twenty (20) years imprisonment. The Appellant was aggrieved by his conviction and sentence and duly filed an appeal to this court.

In his petition of appeal, the Appellant challenged his conviction and sentence on several grounds. He was aggrieved that he had been convicted on a plea of guilty that was equivocal. In particular, he took issue with the fact that the trial court had failed to ascertain that he understood the substance of the charge and the consequence of pleading guilty to the charge. He faulted the trial magistrate for failing to accord him a fair trial. He was finally aggrieved that he had been sentenced to serve a custodial sentence that was harsh and excessive. The Appellant prayed that his appeal be allowed, his conviction quashed and the sentence imposed on him set aside.

At the hearing of the appeal, the Appellant reiterated the contents of his petition of appeal. He asserted that he had been duped into pleading guilty to the charge. He prayed that he be given another opportunity to plead to the charge by this court directing that he be retried. The Appellant claimed that he was innocent and he was infact a victim of mistaken identity. Ms. Ngetich for the State opposed the appeal. She submitted that the Appellant was properly convicted after he pleaded guilty to the charge. The court had ensured that he understood the charge. The charge was read to him in Kiswahili, a language he professed to understand. She submitted that there were no grounds upon which this court can impeach the conviction of the Appellant by the trial court. The sentence was legal. She urged the court to dismiss the appeal.

This court's duty as the first appellate court is to reconsider and to re-evaluate the evidence adduced before the trial court and reach its own independent determination whether or not to uphold the conviction of the appellant. In the present case, the Appellant was convicted on his own plea of guilty. This court has carefully examined the record of the trial court. It was clear that the trial court took into account the guidance issued by the Court of Appeal in the landmark case of **Adan -vs- Republic [1973] EA 445** at page 446 where the court held thus:

***“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.”***

In the present appeal, the charge, and all the elements thereof, was read to the Appellant in Kiswahili, a language he professed to understand. He pleaded guilty to the charge. The facts supporting the charge were read to the Appellant. He confirmed the facts to be true. He was convicted on his plea of guilty. The Appellant’s appeal on conviction therefore lacks merit and is hereby dismissed.

On sentence, the Appellant gave his mitigation. His mitigation was however not considered before the trial court sentenced him. The trial court did not take into consideration that the Appellant was a first offender. The court did not also take into account the fact that the Appellant had pleaded guilty to the charge and therefore saved the court valuable judicial time. The circumstances in which the offence was committed dictated that the Appellant serves a custodial sentence but not the harsh one that was imposed by the trial court. In the premises therefore, this court agrees with the Appellant that the custodial sentence imposed by the trial court was harsh and excessive in the circumstances. That sentence is therefore set aside and substituted by a sentence of this court. The Appellant is sentenced to serve five (5) years imprisonment with effect from the date that he was convicted by the trial court *i.e.* 7<sup>th</sup> January 2013. It is so ordered.

**DATED AT NAIROBI THIS 5<sup>TH</sup> DAY OF FEBRUARY 2015**

**L. KIMARU**

**JUDGE**