



**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**CRIMINAL APPEAL NO.576 OF 2009**

*(An Appeal arising out of the conviction and sentence of K. MUNEENI - PM delivered on 4<sup>th</sup> December 2009 in Kiambu CM. CR. Case No.2013of 2009)*

**FRANCIS GATHOGO WANYINA.....**

**.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant, Francis Gathogo Wanyina was charged with **manslaughter** contrary to **Section 202** of the **Penal Code**. The particulars of the offence were that on 23<sup>rd</sup> January 2006 at Kirigiti, Kiambu County, the Appellant unlawfully killed Samuel Gichia Ndungu. When the Appellant was arraigned before the trial magistrate's court, he pleaded guilty to the charge. He was sentenced to serve fifteen (15) years imprisonment. He was aggrieved by his sentence and filed an appeal to this court.

His appeal was in form of mitigation. He stated that the custodial sentence that was imposed on him was harsh and excessive in the circumstances. He was of the view that the trial court had not taken into consideration that he was a first offender and had pleaded guilty to the charge so as not to waste the court's time. He stated that he was a young man who should be given a second chance in life. He vowed not to commit any other offence. During the hearing of the appeal, the Appellant reiterated his grounds of appeal. He stated that he was pleading for a reduction of sentence. He was reformed and had learnt a trade while in prison. He urged the court to exercise leniency on him. Ms. Aluda for the State opposed the appeal on sentence. She submitted that the Appellant disappeared for three (3) years after committing the offence. She urged the court to order for a probation report to be prepared before acceding to the request by the Appellant for review of his sentence.

When the trial court sentenced the Appellant to serve the custodial sentence, it was exercising judicial discretion. As an appellate court, this court will only interfere with such exercise of judicial discretion if it is established that the sentence was manifestly harsh and excessive or was so lenient as to amount to miscarriage of justice. This court will interfere with the sentence if it is established that the sentence was unlawful. In the present appeal, the Appellant pleaded with the court to exercise leniency on him by reducing the custodial sentence that was imposed on him. Before delivering this judgment, this court ordered for a probation report to be prepared. The report dated 18<sup>th</sup> February 2005 is not favourable. The probation officer noted that the Appellant is an habitual bhang smoker, was bent on revenge on the family of the deceased and finally his own family was unwilling to accept back at the present moment in view of his past conduct. It was obvious from the report that the Appellant's claim to the effect that he had reformed is not true. However, the probation report will not prevent this court from objectively considering if the custodial sentence meted on the Appellant fitted the crime that he committed.

In the present appeal, the Appellant was convicted for killing the deceased who was his rival in a love triangle. The Appellant pleaded guilty to the charge. He saved the court's time. He was a first offender. This court is of the view that the sentence of fifteen (15) years imprisonment that was imposed by the trial court was harsh and excessive in the circumstances. In the premises therefore, that sentence is set aside

and substituted by a sentence of this court. The Appellant is sentenced to serve ten (10) years imprisonment. The sentence shall take effect from 4<sup>th</sup> December 2009 when the Appellant was sentenced by the trial court. It is so ordered.

**DATED AT NAIROBI THIS 3<sup>RD</sup> DAY OF JUNE 2015**

**L. KIMARU**

**JUDGE**