



REPUBLIC OF KENYA

IN THE COURT OF APPEAL  
AT MOMBASA  
CRIMINAL APPEAL NO. 35 OF 1997

GEDION KENGA MAITA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from a sentence of the High Court of Kenya at Mombasa (Lady Justice Ang'awa)  
dated 5th March, 1996

in

H.C.CR.C. NO. 57 OF 1995)

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**JUDGMENT OF THE COURT**

The deceased Fredrick Charo Kenga was the brother of the appellant Gedion Kenga Maita. The appellant did not have a wife; he did not have children either. So his deceased brother, when quarrelling with the appellant, told the appellant that he (appellant) was a useless man with no wife and children and that upon his death, nobody would remember him. To cap it all, the deceased kicked the appellant. The appellant lost his cool, ran and got a knife and stabbed his brother who subsequently succumbed to that injury. The appellant ran and disappeared but he subsequently gave himself up to the police. On these facts the appellant admitted a charge of manslaughter contrary to section 202 as read with section 205 of the Penal Code. The offer to plead guilty to the lesser charge of manslaughter was acceptable to the prosecution and the court did accept it. Had the appellant known the vagaries and the caprices of those who man our judicial system, he probably would not have offered to plead guilty.

The learned Judge rewarded him with a sentence of life imprisonment. The appellant is about forty years old.

The learned Judge appears to think that a person convicted of manslaughter must be sentenced only to life imprisonment. She says in her judgment:-

"The offence before the court is one of manslaughter duly stepped down from that of murder. This carries and makes one liable to imprisonment for life. I thus sentence the accused to life imprisonment".

If a person is liable to a particular sentence it does not, and cannot mean the person must be given that sentence. The sentence of life imprisonment provided under section 205 of the Penal Code is the maximum sentence which can be imposed - it is not a minimum sentence. The discretion of the court to

assess the appropriate sentence remains and as far as the experience of the three of us goes this is the first sentence of life imprisonment we have come upon. We are not saying that a court has no power to pass a sentence of life; a court can do so, depending on the circumstances of a particular case which circumstances must include the circumstances under which the offence itself was committed, the circumstances of the accused person such as whether he is a first offender, how long he has been in prison awaiting trial and things of that nature. We do not know what circumstances the learned Judge took into account in passing the present sentence for she gives no reasons for it except that the appellant was liable to it. We think the sentence of life in the circumstances of the case was not only unreasonable but outrageous. There was no basis for it and we must interfere with it. This Court will definitely interfere with sentences which are wholly out of line with other sentences and which can only be seen as an attempt by a Judge to stamp his or her authority, rather than to avenge the society for a wrong committed against it. We allow this appeal and reduce the sentence of life imprisonment to one of five years imprisonment to run from the date when the appellant was sentenced by the High Court. We so order.

Dated and delivered at Mombasa this 14th July, 1997.

R. S. C. OMOLO

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JUDGE OF APPEAL

A.M. AKIWUMI

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JUDGE OF APPEAL

A. A. LAKHA

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR