



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL OF KENYA**  
**AT NAIROBI**  
**CRIMINAL APPEAL 64 OF 1994**

**FESTUS WANJOHI GITHENDU.....**  
**.....APPELLANT**

**AND**

**REPUBLIC.....**  
**.....RESPONDENT**

**(Appeal from a sentence of the High Court of Kenya at Nairobi (Mr. Justice V.V. Patel) dated 9<sup>th</sup> May, 1994**

**IN**

**H.CR.C. NO. 19 OF 1994)**

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**JUDGMENT OF THE COURT**

The appellant pleaded guilty to the lesser charge of manslaughter, Musa Bukhuru whom he killed was his work-mate at the Carnivore Restaurant. On that unfortunate evening, the two had been working together at the restaurant. It was a very busy night and it is obvious to us that the staff must have been under great pressure. For a reason which is not clear, a quarrel started between them, the deceased hit the appellant first knocking out a tooth and loosening the other. The appellant either had a knife in his hand or the knife was on the table where they had been cutting meat for the customers. We note that the deceased on his part seriously provoked the appellant and hurt him in the process. True, the appellant used a lethal weapon, but the weapon was already with or near the appellant. We think the learned Judge did not sufficiently consider these factors when he sentenced the appellant to six years imprisonment.

In our view, that sentence was, in the circumstances of the case, manifestly excessive particularly in view of the provocative conduct of the deceased. We accordingly reduce the sentence of six years to three years imprisonment to run from the date when he was sentenced by the High Court. We so order.

Dated and delivered at Nairobi this 1<sup>st</sup> day of March, 1995.

**J.M. GACHUHI**

.....

**JUDGE OF APPEAL**

**R.S.C. OMOLO**

.....

**JUDGE OF APPEAL**

**A.A. LAKHA**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**