



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL OF KENYA**

**AT NAKURU**

**Criminal Appeal 23 of 1994**

**STEPHEN MUHUNI.....APPELLANT**

**AND**

**REPUBLIC.....RESPONDENT**

**(Appeal from a conviction and a sentence of the High Court of Kenya at Nakuru (**

**Rimita, J.) dated 16<sup>th</sup> December, 1993**

**IN**

**H.C.CR.C. NO. 37 OF 1993)**

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

The appellant STEPHEN MUHUNI was charged with the murder of his neighbour, Mwangi Mucheke, at Murunyu Farm in Nakuru District on the 8<sup>th</sup> day of April, 1988. Upon arraignment before the High Court at Nakuru he pleaded guilty of the lesser offence of manslaughter and was sentenced to 8 years imprisonment. He now appeals against that sentence as being manifestly harsh and excessive.

The facts which the prosecution relied and which were accepted by the appellant at his trial were that while the appellant was in his mother's house the deceased went there to shelter from the rain and whilst therein a misunderstanding arose between them during the course of which the accused was hit with an iron bar. He retaliated by knocking down the deceased and inflicting upon him multiple injuries all over the body. As a result of all those injuries, the deceased fell down and died later the same night. The post-mortem examination report certified the cause of death to have been as a result of neurogenic and haemorrhagic shock due to multiple injuries following the assault.

Before us the appellant's counsel has submitted that the appellant is aged 34 years and a first offender who had been provoked by the deceased who was the aggressor. We have ourselves considered the circumstances of the case and find that the fact that the appellant had been in custody for over 5 years before conviction and that the deceased was the author of the attack upon him ought to have been considered in awarding the sentence. That omission has attracted our interference.

In the circumstances we are of the view that the sentence imposed upon the appellant was manifestly

harsh and excessive. We accordingly reduce it to the period already served and order that the appellant be released forthwith unless otherwise lawfully held.

Dated and delivered at Nakuru this 27<sup>th</sup> day of April, 1994.

R.O. KWACH

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JUDGE OF APPEAL

M.G. MULI

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

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

**DEPUTY REGISTRAR**