



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT MALINDI

CRIMINAL APPEAL 35 OF 1992

KARIUKI NYOIKE APPELLANT

AND

REPUBLIC RESPONDENT

**(Appeal from a conviction and sentence of the High Court of Kenya
Mombasa(Wambilyanga,J.) dated 7th May, 1991 In H. CR. C. NO. 11 OF 1990)**

JUDGMENT OF THE COURT

On 7th May, 1991 the appellant pleaded guilty to the offence of manslaughter contrary to Section 205 of the Penal Code before the High Court at Mombasa, Wambilyangah, J. He was on the same day convicted of the said offence and sentenced to 8 years imprisonment. His complaint before us is that that sentence was harsh considering the period he had been in custody before the date of the sentence.

H A, the deceased, was married to the appellant. Out of their union, they had one child. O to some marital problem, the deceased had at some time left the appellant and had gone to live with her parents. Later she returned to the appellant leaving the child of their marriage with the said parents. Subsequently, this became the fulcrum of dispute between her and the appellant. On 22nd December, 1988 the appellant and the deceased went to their village elder over this matter. The three of them decided to proceed to Garsen Police Station to have the matter resolved. On the way, the appellant started to insult the deceased. The latter protested. In the process, the appellant who was armed with a knife drew it out and with it fatally stabbed the deceased on the abdomen. Her cause of death was shock due to excessive intrapertoneal haemorrhage.

Before sentencing the appellant, the learned trial judge observed that the carrying of the knife by the appellant which he used to kill the deceased aggravated the circumstances of the case as it demonstrated his ill disposition towards her. The trial judge then said that he had taken into account all what was said in mitigation by counsel for the appellant.

The appellant had been in custody for a period of over 2 years and 4 months as at the date of his sentence. He had started to insult the deceased and was the aggressor. He used a lethal weapon against her. Marital differences apart, he had no cause to resort to such brutality against the deceased after having started to

insult her. Hence, although the sentence of 8 years imprisonment is severe considering the period of custody referred to above, we do not think that in the circumstances of this case it was harsh. It was well deserved. Accordingly we dismiss the appellant's appeal.

It is so ordered.

Dated and delivered at Mombasa this 25th of January, 1993.

J.M. GACHUHI

JUDGE OF APPEAL

J.E. GICHERU

JUDGE OF APPEAL

A.M. COCKAR

JUDGE OF APPEAL