



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT MALINDI

CRIMINAL APPEAL 169 OF 1988

MWALILI TSAFWE APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from a sentence of the High Court of Kenya

Mombasa (Mr Justice E.M. Githinji) dated 6th September, 1988

In

H.C.CR. C NO. 4 OF 1988)

JUDGMENT OF THE COURT

The appellant appeals to this Court against the sentence of ten years imprisonment imposed upon him by the High Court following his plea of guilty to a charge of manslaughter C/S 202 as read with Section 205 of the Penal Code. The appellant and another man who appears not to have appeared admitted that they tortured the deceased and eventually offered him a rope with which to hang himself. The deceased refused to oblige and the appellant and his confederate got hold of him, forced the rope around his neck and in the end hanged the deceased. They did all these because they believed the deceased was, practicing witchcraft to their detriment. The charge was reduced from murder to manslaughter because it appears accepted that the belief in witchcraft and its potency to cause harm is widely prevalent in the community from which the appellant comes. Having pleaded guilty, the appellant's advocate in the High Court brought out various matters in mitigation on behalf of the appellant. Those matters were that the appellant was 28 years old, that he was a first offender, that he was sorry for the offence and that he had been in custody for 1 ½ years before sentence. The learned trial Judge had all these matters in mind before he passed his sentence and the Judge thought the Appellant was lucky in getting away with what on its face appeared to be an intentional murder. We are also of the same view. There is no merit in this appeal and we order it to be dismissed.

Dated and delivered this 21st day of January, 1992.

J.M. GACHUHI

JUDGE OF APPEAL

R.O. KWACH

JUDGE OF APPEAL

R.S.C. OMOLO

AG. JUDGE OF APPEAL