REPUBLIC OF KENYA

COURT OF APPEAL AT NAKURU

Criminal Appeal 37 of 1992

AGNES WAIRIMU GICHUKI …………..………. APPELLANT

AND

REPUBLIC …………………………..…………. RESPONDENT

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

doret (Justice Aganyanya) dated 20th March, 1991

In

H.C.CR. C NO. 24 OF 1989)

****

JUDGMENT OF THE COURT

AGNES WAIRIMU GICHUKI (hereinafter called "the appellant"), was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code, in that on 1st January, 1989, at Shauri Yako Estate, Uasin Gishu District of the Rift Valley Province, she murdered Susan Wacheke (the deceased).

According to the evidence led a the trial and accepted by the Judge, the deceased had given the appellant a hundred shillings note to go and buy chang'aa worth KShs. 10/= for herself and to return the change of KShs 90/= to the deceased. The appellant bought the liquor but refused to return the change to the deceased. The deceased demanded the change several times culminating with the final encounter in the appellant's house on the night of 1st January, 1989, when the appellant stabbed the deceased with a kitchen knife and fatally wounded her.

After a full trial, the appellant was convicted of manslaughter and sentenced to 6 years imprisonment. She now appeals to this Court against both conviction and sentence. Before us she did not put forward any valid grounds for challenging her conviction. The evidence against her was overwhelming. She was the only other person besides the deceased present in her house where the attack tool place. The knife which the appellant used in the attack and which was heavily stained with the deceased's blood was recovered in the appellant's house. Although the appellant had suggested that the offence had been committed by someone else, the leads she gave the police in this regard proved to be false. The appeal against conviction must therefore fail and it is accordingly dismissed.

As regards sentence, although it is lawful, it seems to us that if all the relevant personal circumstances of

the appellant had been placed before the Judge, he would have been inclined to impose a shorter sentence than he did. The only mitigating factor placed before the Judge by counsel who appeared for the appellant at her trial was that the appellant was drunk at the material time. The appellant has made a further plea in mitigating before us and she says that her two children aged 16 and 9, have been abandoned by her husband and are now being cared for by her poor parents. We do not believe that the children should be made to suffer because of the fault of their mother. Nevertheless, the appellant must take responsibility for the senseless killing of the deceased. For these reasons, we consider that the ends of justice would be met by reducing the sentence to 3 years. The appeal against sentence is allowed to this limited extent only.

Dated and delivered at Nakuru this 25th day of September, 1992

J.R.O. MASIME

JUDGE OF APPEAL

J.E. GICHERU

JUDGE OF APPEAL

R.O. KWACH

JUDGE OF APPEAL