



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT MOMBASA
(Coram: Gachuhi, Cockar JJ.A. & Omolo Ag. J.A.)
CRIMINAL APPEAL NO. 123 OF 1990

BETWEEN

ALEXANDER MUTESHI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a conviction and sentence of the High Court of Kenya at Mombasa (Bosire, J.) dated 1/2/90 in Criminal Case No. 5 of 1989)

JUDGMENT OF THE COURT

The appellant pleaded guilty to a charge of manslaughter contrary to section 202 as read with Section 205 of the Penal Code. He was convicted on his plea and sentenced to 8 years imprisonment. He now appeals against the sentence, urging this court to reduce it because, as he put it, it is heavy and excessive and that it will ruin him and his family. The facts which the appellant accepted were that on 4th September, 1988 he picked a quarrel with a workmate resulting in a fight. They were separated. The deceased moved away and sat a distance away. He passed where the deceased was and the deceased rose up. Without any exchange of words, the appellant hit the deceased with a sledge hammer on the left forehead. The deceased died in hospital while undergoing treatment.

The Principal State Counsel supports the conviction but states that the appellant had stayed in custody for 1/2 years before the date of plea, and that the sentence meted out was excessive.

From the record of the proceedings, we note that the trial judge took into consideration the circumstances regarding the charge and the plea of guilty and the period the appellant was in custody before imposing the term of imprisonment. Taking all the facts of this appeal into account, we do not consider that the sentence imposed is manifestly excessive to allow us to interfere with the decision of the trial Judge. The appeal has no merit and we order it to be dismissed.

Dated and delivered at Mombasa this 1st day of February, 1991.

J.M. GACHUHI

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JUDGE OF APPEAL

A.M. COCKAR

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JUDGE OF APPEAL

R.S.C. OMOLO

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR