Muoki v Republic

Court of Appeal, at Nairobi September 17, 1985

Madan, Kneller JJA & Platt Ag JA

Criminal Appeal No 133 of 1984

(Appeal from the High Court at Nairobi, Aganyanya J)

September 17, 1985, Madan, Kneller JJA & Platt Ag JA delivered the following

Judgment.

This is a first, and last appeal, and it is by Joseph Kioko Muoki from the sentence of three and a half years imprisonment passed on him by Mr Justice Aganyanya in the High Court at Nairobi when he pleaded guilty to manslaughter on July 24 1984.

The appellant asks this court to 'consider' this sentence and reduce it for the following reasons.

He was not in full possession of his faculties when he unlawfully killed Peter Mutinda Mbula on March 12, 1982 at Muthethe in Muthetheni location in the Machakos are. He was drunk and so did not recognize the victim as a neighbour and member of his clan. He thought he, and two others with him, were about to rob him of his bicycle. He now bitterly regretted what he had done.

He had pleaded guilty to this charge (half way through his trial for the murder of Mbula), he had no relevant previous convictions and he had given himself up to the police when he heard he was wanted. He had then languished in remand for one and a half years before he was sentenced. He and his relative would have to give the deceased's family twelve cattle to avoid blood feud when he was released according to Akamba custom. His parents were too old to work, and his wife and three children now had no-one to support them.

Mbula was about 40 when he was killed and the cause of his death was bleeding in his brain due to both temples of his skull being fractured because the appellant smote him about the head and body with a short stick during a fight between them at 10.00 pm or so on March 13, 1982. The appellant was a Mombasa businessman aged 32 and uninjured. The fight began because Mbula had collided in the dark with the appellant's bicycle which he had left on the road between Mbula's home and the camp of the chief to which Mbula was hurrying to report (first) a drunken brawl which he and his brother had had with another neighbour. So Mbula, it seems, was a man of violence, too, at least when he was in his caps, and met his death at the hands of one with a similar failing. The appellant's advocate when mitigating for the appellant brought out all that could be said for him and added this –

The time the accused has spent in custody should be taken as sufficient custodial sentence."

The learned judge in his note on the sentence he chose included these pharases – "Considering, therefore, all these circumstances, it would not be in the interest of justice to let accused {go} scot free under the pretext that the period spent in custody is {a} sufficient custodial sentence. {The} courts have a duty to discourage killings of this nature and cannot do so adequately unless they make out sufficient punishment to act as a deterrent."

The sentence selected by the learned judge had to begin on the date on which it was pranced. Section

333(2) Criminal Procedure Code (cap 75). This would seem to preclude any court from antedating the beginning of a sentence. Rex v Yonasini Egalu & others (1942), when considering what term of imprisonment to impose a court is not bound to take into account the period an accused has spent in remand though it usually does, and rightly so. Thus, in some circumstances, a period of one and a half years in remand might amount to a sufficient punishment for someone convicted of an offence, even manslaughter, and would not amount to letting him to go ‘scot free’.

As usual, however, this court will not interfere with the discretion of a trial judge in the matter of sentence unless it appears that in assessing it he acted on some wrong principle or did not act on some correct one or has imposed one which is manifestly excessive. Ogalo Owuora v R (1954), 21 EACA 270 (CA-K).

Here we are not persuaded that there is any ground to adjust the sentence. The loss in all, five years liberty for killing with a stick an unarmed man at night because it seemed he might steal the appellant’s bicycle was not manifestly excessive for the appellant even though he had taken too much alcohol.

The learned judge did not, in our view, act on any wrong principle or overlook any material factor. Our order is that the appeal is dismissed.