



**Republic of Kenya**

**Court of Appeal, at Nairobi**

**Criminal Appeal No 105 of 1985**

**Kanyingi**

**versus**

**Republic**

**(Appeal from the High Court at Nairobi, Owour J)**

**December 11, 1985, Nyarangi JA, Platt & Gachuhi Ag JJA delivered the following**

**Judgment.**

This appellant, James Kanyingi, was charged with the offence of murder contrary to section 203 as read with section 204 of the Penal Code. He was convicted of the lesser offence of Manslaughter contrary to section 202 as read with section 205 of the Penal Code. He was sentenced to a term of imprisonment of 6 years. He appeals to this court on sentence.

The three grounds of appeal upon which this appeal is presented to this court are at variance with the accepted facts of the case as narrated by the prosecution. The facts were that the appellant, an Administrative Policeman armed with a G3 rifle was guarding the D O's office at Pumwani on the night of May 5 and 6 1984. Opposite to the D O's office is a Sports Club 50 yards away where a dance was being held. A disturbance caused by a fellow administrative policeman occurred there at midnight. The appellant went to the aid of his colleague and shot deceased rupturing the heart and intestines. He used excessive force in the circumstances. The deceased died on the way to hospital.

Though the appeal is on sentence, we feel that the appellant was lucky to get away with such a light sentence in the circumstances of the case. The sentence cannot be said to be excessive or severe.

The learned state counsel supports the sentence. There is no merit in this appeal which we order to be dismissed.

Delivered on the **December 11, 1985**

**Nyarangi JA, Platt & Gachuhi Ag JJA**