

IN THE COURT OF APPEAL, AT NAIROBI

CRIM APP 49 OF 84

MUTUNE MWEI APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from a sentence of the High Court of Kenya at Nairobi (Todd, J) dated March 12, 1984) In Criminal Case No 3 of 1984)

JUDGMENT OF THE COURT

The appellant, Mutune Mwei, was initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He pleaded not guilty but on the hearing day, he offered to plead guilty to the lesser offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The offer was accepted by learned state counsel and approved by the High Court (Todd, J). After the facts were outlined by learned state counsel and accepted by the appellant and his advocate, the judge found the appellant guilty of the lesser offence, heard and considered his mitigation and sentenced him to 2 years' imprisonment. The judge did not convict the appellant but there is no doubt that he intended to. The irregularity has not occasioned the failure of justice and is curable under Section 382 of the Criminal Procedure Code.

In his appeal to this court, the appellant complains that the judge overlooked his plea of guilty, his remorse, and the fact that he committed the offence when he was under the influence of alcohol. He puts his age at 85 years and not 70 years as was stated by his advocate and says he is a victim of high blood pressure and he was a first offender. So the appellant is saying that the sentence is very severe. He, deceased, was so concerned about the safety and security of the appellant that he asked his daughter to escort the appellant, who was then in a drunken state, to his house. For some undisclosed reason, the deceased's daughter failed to escort the appellant whereupon the deceased volunteered to escort the appellant who fatally stabbed him, for no apparent reason, as the two set off. The appellant may be aged 70 or 85 years. The admitted facts of the unlawful killing portray him as a vicious and callous man. He had the energy to kill the deceased at a stroke, notwithstanding his advanced age. The judge considered the mitigating factors urged by the appellant. He must consider himself very fortunate indeed to have been given the very lenient sentence of two years imprisonment. His appeal is wholly without merit and it is dismissed.

That is the order of the Court.

Dated and at Nairobi this 16th day of November, 1984.

A A KNELLER

JUDGE OF APPEAL

Z R CHESONI

AG JUDGE OF APPEAL

J O NYARANGI

AG JUDGE OF APPEAL

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

DEPUTY REGISTRAR