

IN THE COURT OF APPEAL AT NAIROBI

CRIMINAL APPEAL 31 OF 84

PETER GATHURU KARANJA APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from a conviction of the High Court of Kenya at Nairobi (Oluoch, J) dated February 14, 1984) In Criminal Case No 58 of 1983)

JUDGMENT OF THE COURT

The appellant, Peter Gathuru Karanja, has appealed against his conviction of manslaughter and three years' imprisonment. He was tried and convicted by Mrs Justice Aluoch for unlawfully killing Joseph Mathenge in the morning of February 16, 1983 at Tursker village in Nairobi.

His appeal is on the grounds that, the learned judge misdirected herself in holding that the defence of self defence was not available to him without giving sufficient reasons; she also misdirected herself in failing to consider prosecution witness, James David Ngandu (PW 2), Peter Maithya Mwenga (PW 4), Benson Mugo Kinge (PW 5), John Mwai Mbutu (PW 6) and Peterson Muriuki Waigoro (PW 7) unreliable, since she rejected their evidence that the appellant was not drunk on the material day and she erred in holding that the injuries the deceased sustained could not have been caused by a fall on a hard floor.

According to the evidence on record, the incident which led to the death of Mathenge was in a sequence of a dispute that developed between the appellant and the deceased. The appellant was, it appears, working on a machine whereas the deceased was working with a fork lift. Each wanted to fill his equipment with water and there was only one hose pipe in use, which the deceased first started using. The appellant, unsuccessfully for several times, attempted to snatch the hose pipe from the deceased and interfered with the flow of water. The deceased pushed the appellant away for about four times. However, the deceased completed filling his fork lift with water and climbed it to go away when the appellant held the jacket off and pulled the deceased down. The appellant fetched an iron bar and the deceased, on advice of his workmates, started running away chased by the appellant. The race was short, for after about twenty yards of it, the appellant had caught up with the deceased, hit the latter on the back of the head with the iron bar and the deceased fell down. When their workmates rushed to the scene, the deceased had blood oozing through his mouth and nose. Patrick Ndege Mugane (PW 9) drove the deceased to the Aga Khan Hospital but on arrival, the deceased was pronounced dead by the Doctor on duty. Doctor Ribeiro, who carried out autopsy on the body of Mathenge was of the opinion that, the cause of death was bleeding over the brain due to a fractured skull due to injury with a blunt object. The top of the skull and scalp were bruised and swollen and broken into many pieces as observed by the Doctor.

At least five prosecution witnesses who were working with the deceased and appellant saw and witnessed the entire incident. These are the witnesses the appellant says the trial judge should have held their evidence unreliable. These witnesses had not seen the appellant drinking; they had no evidence, medical or otherwise, that he had drunk any alcohol, and so when they each said that he was not drunk, they spoke of what they expected of him from the state of affairs as viewed in the light of the company regulations. Doctor Obonyo examined the appellant and he testified from the results of his medical examination. In these circumstances, it could not be said that there was a conflict in the evidence of the prosecution witnesses. At any rate, even if the five witnesses namely Ngandu, Mwenga, Kinge, Mbutu and Waigoro were mistaken on the fact of the appellant's drunkenness, that alone did not make them untruthful witnesses. The learned judge who saw and heard them believed their evidence on all other matters. She was entitled to do so, and we have no reason to interfere with her findings. Throughout the course of events, the appellant was aggressive. He tried to prevent the deceased from using the hose pipe; when the

deceased tried to go away he pulled the deceased down from the folk lift and he chased the deceased who, it appears, was unarmed, and fatally assaulted him with an iron bar. The evidence of the blows, the eye witnesses saw the appellant give the deceased, excluded the possibility of the injuries sustained having been caused by a fall on a hard floor.

The appellant was under no attack or threat of attack for him to defend himself, so the defence of self defence was not available to him.

The sentence has been described by Miss Mbarire as reasonable. We say it was a lenient one.

As in our view, the appellant was properly convicted and sentenced. We order his appeal against conviction and sentence to dismissed.

Delivered at Nairobi this 16th day of November, 1984.

A A KNELLER

JUDGE OF APPEAL

J O NYARANGI

AG JUDGE OF APPEAL

Z R CHESONI

AG JUDGE OF APPEAL

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

DEPUTY REGISTRAR