

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT KISUMU

(Coram: Porter, Kneller and Hancox, JJ.A)

CRIMINAL APPEAL NO 49 OF 1983

BETWEEN

ALEXANDER ODUYU.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a sentence of the High Court of Kenya at Kisumu (Schofield J.) dated 11th April, 1983 in High Court Criminal Case No 9 of 1983)

JUDGMENT OF THE COURT

The appellant appeals against a sentence of imprisonment of 21/2 years imposed on him after he had pleaded guilty to the manslaughter of Maria Atieno Oduyo, who was at the material time living with him as his wife.

On the night of June 5, 1981, there was a quarrel between the two because the deceased, having been away all day, arrived home drunk. The appellant beat the deceased with a stick on her left shoulder and neck and pushed her against the wall. Shortly after he discovered her dead in bed and, instead of reporting the matter, threw the body down the latrine pit, where it was discovered as a skeleton over 4 months later, after inquiries had been made about the deceased and the appellant interrogated by the police. The post mortem showed that the deceased died from a fractured skull with consequent bleeding inside the skull. It may be that the appellant had already been in custody for some 18 months when he was sentenced and that he is now as he says, fully repentant. Moreover he has 2 children still at home and for this and other reasons he seeks leniency. Nevertheless he attacked the deceased with a stick and struck a second blow despite only minor retaliation. He then concealed the body under particular unpleasant circumstances, until the pressure of enquiries from relatives and the Assistant Chief forced him to reveal its whereabouts. The reason he did this was,

he says, because he was afraid to report to her parents as he had failed to pay them dowry. We cannot possibly say that the sentence was in any way excessive taking into account all the circumstances of the case.

The appeal is accordingly dismissed.

Delivered at Kisumu this 21st day of June, 1983.

K D PORTER

JUDGE OF APPEAL

A A KNELLER

JUDGE OF APPEAL

A R W HANCOX

JUDGE OF APPEAL