

REPUBLIC OF KENYA

IN THE COUR OF APPEAL
AT KISUMU
(Coram: Potter, Kneller & Hancox, JJ.A)
CRIMINAL CASE NO 41 OF 1983

BETWEEN

JOSEPH UHURU s/o JAMES NGONGA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

**(Appeal from a sentence of the High Court of Kenya at Kisumu
(Schofield, J) dated 16th March, 1983
in
High Court Criminal Case No 4 of 1983)**

JUDGMENT OF THE COURT

Due to an argument at a dance at the house of one Nyamboko - following a funeral ceremony earlier that day, May 30, 1981, the appellant admittedly struck the deceased on the head with a stick. There was a dispute as to whether the group of people who came from Kanyawegi sub-location, which included the deceased, should take part in the dance. It was said in the High Court, and accepted by the appellant's advocate, that when they did so, and accepted by the appellant's advocate, that when they did so, the appellant strongly objected to the deceased dancing with a girl named Akech Nyambaga and accordingly struck him one blow on the back of the head with a rungu.

Two days later the deceased was taken to hospital, but died on June 3. The post mortem revealed that he had received a fracture of the cervical spine with heavy internal bleeding, and that the cause of death was shock and haemorrhage due to that fracture.

On pleading guilty to the offence of manslaughter the appellant was sentenced to two years' imprisonment, the learned Judge taking the appellant's age and the twenty one months he had already spent in custody into account. He now appeals to this court against that sentence stating that, although the judge had been kind to him. The period he had already served was sufficient to deter him from ever doing this again. He says he is only nineteen years old but the medical report showed him to be twenty years on September 21, 1982 and the judge deduced that he was aged twenty one at the time of sentence.

Whether this is right or not we are satisfied he must have been above eighteen years at the time of the offence, while the deceased was stated to be only sixteen. Even taking this into account, together with the mitigating factors advanced by his advocate before the High Court, and by the appellant in the count, it cannot possibly be said that the sentence was in any way excessive. Violence of this kind, even though there may be no intention to kill, must be deterred.

The appeal is accordingly dismissed.

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

K D POTTER

JUDGE OF APPEAL

A A KNELLER

JUDGE OF APPEAL

A R W HANCOX

JUSGE OF APPEAL