



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**  
**AT KISUMU**

**(Coram: Kneller & Hancox, JJA & Chesoni Ag J A)**

**CRIMINAL APPEAL NO 59 OF 1983**

**BETWEEN**

**JULIUS TEMBO KASITI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**(Appeal from a sentence of the High Court of Kenya at Kakamega (Gicheru J) dated 4th  
May, 1983**

**in**

**Criminal Case No 23 of 1983)**

**JUDGMENT OF THE COURT**

The appellant had repaired the deceased's shoes and so the deceased owed to the appellant some money. On May 1, 1982, while the two were drinking chang'aa and buzaa together the appellant demanded from the deceased payment of the debt. The two men then quarreled but were pacified and they each left for their respective homes. When the appellant went home he armed himself with a panga, a whip, a bow and arrows and went back to meet the deceased, who at the time was still on the way with his brother Jackson Machicha Amalemba and Musa Shaala. When the three men met the appellant he attacked the deceased cutting him on the forehead with the panga. The deceased who wrested the panga from the appellant in turn cut the latter on the shoulder, but that did not deter the determined appellant who flogged the deceased with the whip and then stabbed him on the chest with an arrow. The appellant left his victim to die, ran and reported the incident to Kakamega police station. The deceased died from the injuries inflicted by the appellant as the cause of death was cardio-respiratory arrest due to collapsed heart and collapsed left lung. The doctor who performed the post-mortem examination on the deceased's body detected a deep penetrating wound on the pericardium with blood in the pericardium and deep laceration to the heart. The collapsed left lung also had a laceration with about one litre of blood in the plural cavity. When the appellant was medically examined the laceration on the left shoulder was confirmed.

The appellant was charged with the deceased's murder, but he was convicted of the lesser offence of manslaughter on his own plea of guilty and sentenced to seven years' imprisonment.

In his appeal against sentence only the appellant states that the deceased was his cousin and he unfortunately killed him under the influence of drink and in the course of his (appellant's) self-defence. We had not planned or intended to kill his cousin.

The learned judge before passing the sentence took into account the element of drink, the fact that the

appellant was in custody for a period of one year and he was a first offender. But as the learned judge correctly observed after the appellant and the deceased had quarrelled and had been separated at the drinking party the appellant, most probably having gathered Dutch courage from the drink, went and armed himself with lethal weapons, came back on the way where he ambushed and fatally attacked the deceased. It was not a case of self-defence as the appellant attacked his unarmed cousin. It was a border case between murder and manslaughter and the appellant should consider himself lucky to have got away with manslaughter. On the facts on records and in the circumstances of this case we are of the opinion that the sentence of seven years' imprisonment was severe, but not manifestly excessive, and, in the result, we are unable to interfere and order the appeal to be dismissed.

Delivered at Kisumu this 22nd day of June 1983.

**A A KNELLER**

**JUDGE OF APPEAL**

**A R W HANCOX**

**JUDGE OF APPEAL**

**ZR CHESONI**

**AG JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**