

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT KISUMU

Criminal Appeal 51 of 1983

LAWRENCE ETYANG.....APPELLANT

AND

REPUBLICRESPONDENT

(Appeal from a sentence of the High Court of Kenya at Kakamega (Gicheru, J) dated 18th April, 1983) in

High Court Criminal Case No 4 of 1983

JUDGMENT OF THE COURT

The appellant, a primary school teacher, was convicted of the offences of manslaughter on his own plea of guilty and sentenced to 5 years' imprisonment by the learned acting Judge at Kakamega. He appeals against his sentence on the grounds that he committed the offence while attempting to recover his bicycle, which had been forcibly taken from him, that he has ten children, of whom five are in school, an elderly father to look after and that he himself suffers from bronchial asthma.

The facts stated in the High Court, coupled with the appellant's police statements, show that on the 15th August 1982 the appellant was returning from a beer party with others at about 7.00 p.m. His companions having dispersed he was left alone with his bicycle, when someone suddenly came from behind and struck him with an iron bar. He chased that person and then returned to where he had left his bicycle, only to find his bicycle being ridden away, though whether by his original assailant or another person is not entirely clear. Still later he was passed by someone riding a bicycle which he recognised as his, and attacked that person with a panga, which he had meanwhile collected from his house. Unfortunately the appellant struck this man, who was never identified, on the head and elsewhere on his body inflicting multiple deep cut wounds, one of them penetrating the brain. Death occurred immediately and the cause of death was certified on post mortem as due to external bleeding and severe head injuries. The appellant was also examined and had injuries consistent with having been attacked initially as he has said.

The appellant varied his story in his submission to us by implying that there were two assailants, and by stating that three steel pipes with which he had been attacked were found at the scene by the C I D and an Administration Police men. He added that his district borders Uganda and that people are constantly being attacked, sometimes with firearms, by people who disappear over the border.

This was a relatively savage attack upon a person whom the appellant only suspected to have been, and who may or may not have been, the one who originally struck him, or who made off with his bicycle. Even allowing for his feelings of outrage, and that he may have overreached due to the frequency of attacks from people across the Border, the Judge was in our view quite right in taking a serious view of people taking the law into their own hands. The sentence was heavy, but not in the circumstances, in our view, manifestly excessive.

The appeal is accordingly dismissed.

Delivered at Kisumu this 23rd day of June, 1983

A A KNELLER

JUDGE OF APPEAL

A R W HANCOX

JUDGE OF APPEAL

Z R CHESONI

AG JUDGE OF APPEAL