



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

CRIMINAL APPEAL NO. E088 OF 2024

GILBERT MWENDWA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in Criminal case NO. E230 of 2023 of the Senior Principal Magistrate’s Court at Tawa by Hon. Stephen Jalang’o–Senior Principal Magistrate)

JUDGMENT

1. Gilbert Mwendwa, the appellant herein, was convicted after pleading guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code.
2. The particulars of the offence are that on the 14th day of February 2023, at Mbumbuni market, Mbooni East sub-County within Makueni County, he unlawfully killed Peter Mulili Kiungua.
3. The appellant was sentenced to fifty (50) years’ imprisonment. He was aggrieved and filed this appeal against both the conviction and the sentence. He raised grounds of appeal as follows:
 - a) The learned magistrate erred in both law and fact by convicting the appellant on evidence that did not meet the threshold to sustain a conviction.
 - b) The learned trial Magistrate erred in both fact and law by not considering the appellant’s sworn defence.
 - c) The learned magistrate erred in both fact and law by sentencing the appellant to a harsh and excessive sentence.
4. The state did not file any grounds of opposition or submissions.

5. This is the first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court afresh. I have drawn my conclusions, considering that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **Okeno vs Republic [1972] EA 32**.
6. Contrary to the contention by the appellant that the deceased was taken out of his premises because he was nose-bleeding and sleepy, PC Meshack Wakulo (PW10) found evidence in the premises of a broken stool. Two pieces of the stool had some blood stains. Some exhibits, including an ashtray, were taken for analysis, and the DNA profile generated matched that of the deceased.
7. Though there was no evidence of an eyewitness, the conduct of the appellant to go into hiding until 24th October 2023, when he was arrested in Nairobi, spoke so strongly against him. This was not the conduct of an innocent person. The conviction was based on sufficient evidence on record. Appeal on the conviction is dismissed.
8. The appellant complained that the sentence was harsh and excessive. An appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the trial court's order. These circumstances were well illustrated in the case of **Nilson vs. Republic [1970] E.A. 599**, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in JAMES Vs. REX (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R Vs. SHERSHEWSITY (1912) C.CA 28 T.LR 364.

9. Section 205 of the Penal Code provides as follows:

Any person who commits the felony of manslaughter is liable to imprisonment for life.

10. We do not have facts on record to support the sentence that the learned trial magistrate meted out. It was suggested that the deceased and the appellant had fought over an unpaid bill. I am persuaded to interfere with the sentence by the trial court. I set aside the sentence of 50 years

imprisonment. The same is substituted with a sentence of fifteen (15) years to run from 24th October 2023, when he was arrested.

Delivered and signed at Makueni, this 22nd day of October 2025

**KIARIE WAWERU KIARIE
JUDGE**