IN THE COURT OF APPEAL

AT NAKURU

[CORAM: KOOME, SICHALE & ODEK (Prof.), JJ.A]

CRIMINAL APPEAL NO. 218 OF 2013 (R)

BETWEEN

ANDREW CHUMBA BETT ……APPELLANT

AND

REPUBLIC …….RESPONDENT

(Being an appeal from the judgment of the High Court of Kenya at Nakuru (Wendoh, J) dated 15th March, 2013 **IN NAKURU HCCRC NO. 22 OF 2011**

JUDGMENT OF THE COURT

The appellant, **Andrew Chumba Bett** was charged with the offence of murder contrary to Section 203 and read with Section 204 of the penal code. The particulars of the Information were that on **18th January, 2006**, at Teret Location, Njoro of the then Nakuru District murdered **Daniel Kipkemoi Koech.** In a judgment dated **15th March, 2013**, **Wendoh, J** found the appellant guilty of the offence of manslaughter for the reasons that:

> ***"In the instant case, there was a fight after a drinking spree, the deceased first hit the accused with a stick. For some reason, the accused was armed with a knife which he used to stab the deceased.***
>
> ***There is no evidence that the accused premeditated his actions. In addition it seems the accused only struck the deceased once though the nature of the injury was very serious.***
>
> ***For the above reason, I find that the accused committed a lesser offence of manslaughter and I find him guilty of that offence under Section 202 of the Penal Code. I convict him accordingly".***

He was sentenced to 10 years imprisonment.

It would appear that the appellant was dissatisfied with the sentence as in his grounds of appeal, he raised mitigating factors on the basis that he is diabetic as well as the contention that he is a widower with children who depend on him.

On **11th June, 2019**, the appeal came before us for hearing. **Miss Muchiri**, learned council for the appellant urged us to reduce the sentence of 10 years to the period already served. She reiterated that the appellant is a widower with children with no one to fend for them apart from being diabetic.

Miss Odero, the learned prosecution counsel opposed the appeal. It is her view that 10 years is well deserved; that the appellant is free to seek medical attention while in prison as the latter is equipped with a medical facility; that the appellant disappeared for 5 years leaving behind his children and wife whom he now wants us to believe that he cares for.

We have considered the record, the rival submissions made before us and the law. As stated above, the appellant's complaint was the sentence of 10 years.

In **Shadrack Kipkoech Kogo vrs. Republic, Eldoret Criminal Appeal No. 253 of 2003**, this Court stated:

> ***"sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of***

these, the sentence itself is so excessive and therefore an error of principle must be interfered (sic) (see also Sayeka vrs. R. (1989 KLR 306)"

Similarly, in **Bernard Kimani Gacharu vrs. Republic [2002] eKLR**, this Court rendered itself as follows:

"It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist."

The appellant faced a serious charge of murder. However, the learned judge found the appellant guilty of manslaughter given the fact that a fight ensued between the appellant and the deceased who had both been in a drinking spree. The deceased hit the appellant with a stick. In return, the appellant stabbed the deceased with a knife. It is on account of the stabbing that the deceased lost his life. In our view, the sentence of 10 years was well deserved. It cannot be said that it was too harsh in the circumstances.

We find no merit in this appeal. It is hereby dismissed.

Dated and delivered at Nakuru this 21st day of November, 2019.

M. KOOME

JUDGE OF APPEAL

F. SICHALE

JUDGE OF APPEAL

(PROF) J. ODEK

JUDGE OF APPEAL

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

DEPUTY REGISTRAR