



IN THE COURT OF APPEAL

AT ELDORET

(CORAM): MUSINGA, GATEMBU & MURGOR, JJ.A)

CRIMINAL APPEAL NO. 17 OF 2015

BETWEEN

EMURAI AROPA LOKAALE.....APPELLANT

AND

REPUBLICRESPONDENT

(Appeal from judgment of the High Court of Kenya at Kitale (J.R. Karanja, J) dated 21st January 2014, in H.C.CRC No. 36 of 2012)

JUDGMENT OF THE COURT

The appellant, Emuria Aropa Lokaale was charged with murder contrary to **section 203** as read with **section 204** of the **Penal Code**. The particulars are that on 26th August 2012 at Lokichar Centre, Turkana County he murdered **Edapal Epul (the deceased)**.

The facts were that on 26th August 2012 the deceased and his father, **Otingaluk Lokit Angole (Angole)** PW2 had visited a stock dealer, Peter **Amakat Lochok (Lochok)** PW1 when the appellant came to them and requested to speak with the deceased. The appellant and the deceased went a distance away, and soon after Lochok and Angole heard screams. The deceased returned to Lochok and Angole, and they saw that he had sustained an injury in the abdomen and was bleeding. The deceased then picked a stick, and confronted the appellant. The two continued to fight, but were separated by Lochok and Angole. The appellant then ran away. The deceased was rushed to the hospital where he died whilst undergoing treatment.

Dr. Francis Kiiru, (PW 6) conducted a post mortem and produced a report which showed that the deceased had died from cardiorespiratory arrest secondary to hypotensive shock due to bleeding from the ilioocolic artery.

In his defence, the appellant denied committing the offence, and instead stated that he went to Lokichar to find a person who was indebted to him. The person denied owing him and challenged him to a fight. The debtor threw sand in his face provoking the fight. The appellant stated that he escaped from the scene after other people came to assist the deceased. The appellant was subsequently apprehended and charged.

Based on the evidence, the High Court found the appellant guilty of assaulting the deceased, and

occasioning a fatal injury by the use of excessive force, and in so doing, substituted the charge of murder with that of manslaughter contrary to **section 202 (1)** of the **Penal Code**. He was sentenced to 20 years imprisonment.

Being dissatisfied with the decision of the High Court, the appellant has appealed to this Court against the sentence. In his grounds and submissions presented in Court, the appellant averred that the sentence was severe; he is a first offender, a father and the sole bread winner of his family; and that he is remorseful of the death of the deceased that resulted from a fight over a debt. He pleaded that the court impose a non-custodial sentence instead.

Mr. Mulati, learned counsel for the State opposed the appeal and submitted that the appellant had fought with the deceased in the presence of Lochok and Angole. The trial court was satisfied that given the circumstances of the case a charge of manslaughter was sufficient; that this was an appeal against sentence, and this Court had no jurisdiction to interfere with the sentence meted out by the High Court.

We have considered the appeal against sentence, and the appellant's instant plea for leniency, the mitigation advanced before the superior court, the reasons given by the learned trial Judge for the sentence, and the law governing the offence.

In our view, the learned judge took into account the facts of the case, and more particularly that the appellant fought with the deceased over an outstanding debt. Based on this, the court substituted the charge to manslaughter. During mitigation, the appellant stated that he is a herds boy and a first offender, the appellant was sentenced to 20 years imprisonment.

Given the circumstances of the case where a death occurred as a result of a fight over a debt, and the mitigating factors, we consider that the learned judge gave due consideration to material that was before him, and exercised his discretion properly and fairly in ascertaining the sentence. Accordingly, the appeal on sentence is dismissed.

It is so ordered.

Dated and delivered at Eldoret this 24th day of March, 2017.

D. K. MUSINGA

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCI Arb

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JUDGE OF APPEAL

A. K. MURGOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR