



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: MARAGA, MUSINGA & MURGOR J.J.A)

CRIMINAL APPEAL NO. 4 OF 2012

BETWEEN

ROSE KWAMBOKA1ST APPELLANT

GLADYS NYAKARA.....2ND APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from judgment of the High Court of Kenya at Eldoret (J.R. Karanja, J.) dated 21st July, 2011,

in

HCCRA Case No. 38 of 2010)

JUDGMENT OF THE COURT

This is an appeal from the sentence to 10 years' imprisonment imposed by the High Court on ***Rose Kwamboka and Gladys Nyakara, the appellants***, for the offence of manslaughter contrary to ***section 202*** as read with ***section 205*** of the ***Penal Code***.

The particulars of the offence are that during the night of 11th and 12th June 2010 at Langas Estate within the Eldoret Municipality in Wareng District within the Rift Valley province, the appellants jointly killed ***C M (the deceased)***.

The brief facts are that the deceased, aged 14 years, was the daughter of the 1st appellant. She had left home to live with a boyfriend, David Odhiambo, in Langas, Eldoret. The 1st appellant is the deceased's mother. The 2nd appellant is a friend of the 1st appellant. The two went and brought the deceased back to her home with the intention of disciplining her. They unceasingly lashed her with a bicycle chain causing the deceased sustained severe injuries. The next day her condition worsened, and she was rushed to Moi Teaching and Referral Hospital where she was pronounced dead on arrival.

The appellants admitted the facts as true and were convicted on their own plea of guilty and sentenced as aforesaid. Their dissatisfaction with the sentence meted out by the High Court has provoked this appeal which is before us.

In her submissions, the 1st appellant, who appeared in person, pleaded for leniency particularly as she was ill and had three other children who were left to fend for themselves as she serves the prison sentence; that she was remorseful and would not repeat the offence.

The 2nd appellant, who was also in person, likewise pleaded for leniency as she was a single mother and had no one to care for her only child. She too expressed remorse.

Mr. Mulati, learned counsel for the State, opposed the appeal and submitted that the conviction was the outcome of a plea bargain leading to the reduction of the charge from murder to manslaughter. The sentence was as prescribed by law and was not illegal.

As was stated in **Cecilia Mwelu Kyalo vs Republic Criminal Appeal No. 166 of 2008**,

“In law, sentence is essentially a discretionary matter for the trial court but again in law, in exercising that discretion a trial judge has a duty to take into account all the relevant factors and leave out all irrelevant ones. An appellate Court would only be entitled to interfere with that exercise of discretion where it is shown that the court whose exercise of the discretion is impugned, has either not taken into account a relevant factor or has taken into account an irrelevant factor, or that short of those two, the exercise of the discretion is plainly wrong – see Felix Nthiwa Munyao vs Republic – Criminal Appeal No. 187 of 2000, or that the sentence itself is, in all the circumstances of the case manifestly harsh and excessive.”

The evidence in the appeal before us, however, brings out a case of an over protective mother and her friend who, in seeking to discipline the child, literally beat her to death. The facts of the case were such that the appellants’ actions were well intentioned, but for the excessive beating. We take the view that the learned judge ought to have appreciated the peculiar circumstances of the case. Also to be considered by the learned judge was that the 1st appellant had three other children, and the 2nd appellant one child. Both were single parents and first offenders. The sentence imposed would inevitably give rise to a case of double jeopardy, where the consequences of the ill-fated parental attention accorded to one child would inevitably deny the other children their own parental care and attention.

For the foregoing reasons, we find that the appeal is merited, and that we must intervene in the sentence which we consider to be harsh and excessive. Accordingly, we allow this appeal to the extent of setting aside the sentence imposed and substitute the same with a sentence equivalent to the period that the appellants have so far served so as to result in their being released from prison unless otherwise lawfully held.

Dated and delivered at Eldoret this 10th day of December, 2015.

D.K. MARAGA

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JUDGE OF APPEAL

D.K. MUSINGA

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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