



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: GITHINJI, MWERA & MUSINGA, J.J.A.)**

**CRIMINAL APPEAL NO. 107 OF 2012**

**BETWEEN**

**BONIFACE KARANJA KURIA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

***(Appeal from a ruling of the High Court of Kenya at Nairobi (Achode, J.) dated 16<sup>th</sup> November, 2011***

**in**

**HC. CR. A. No. 126 of 2010)**

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

The appellant was convicted on his own plea of guilty on a charge of manslaughter contrary to **Section 204** as read with **Section 205** of the **Penal Code** in the Chief Magistrate's Court at Thika. The particulars of the offence were that on the 11<sup>th</sup> day of February, 2010 at Gatumari Location within Ruiru in Thika District of the Central Province he killed **Dominic Karaki Kuria**. He was sentenced to life imprisonment. Being aggrieved by that sentence, the appellant filed an appeal to the High Court.

The first appellate court (Achode, J.) having heard **Mr. Mwanza**, the appellant's learned counsel on a plea for reduction of the sentence, called for a Probation Officer's report. The report was presented to court and upon perusal of the same the learned Judge came to the conclusion that there was no basis of interfering with the sentence that was imposed by the trial magistrate. The report indicated, *inter alia*, that the appellant was not remorseful and his neighbours and family members, including his mother, were not ready to receive him back.

The appellant mounted a further appeal to this Court. From the memorandum of appeal on record, it appears that the appellant was faulting the learned Judge of the High Court for convicting and sentencing him as aforesaid. However, when the appeal came up for hearing, the appellant, who was unrepresented, told the Court that it was against sentence only. His plea was for reduction of the same, saying that it was quite severe.

**Miss Oundo**, learned Assistant Deputy Director of Public Prosecutions, opposed the appeal saying that the sentence that was handed down was legal.

**Section 361 (1)** of the **Criminal Procedure Code** states as follows:

*“361. (1) A party to an appeal from the subordinate court may, subject to subsection (8), appeal against the decision of the High Court in its appellate jurisdiction on a matter of law, and the Court of Appeal shall not hear an appeal under this section-*

- a. on a matter of fact, and severity of sentence is a matter of fact; or*
- b. against sentence, except where a sentence has been enhanced by the High Court, unless the subordinate court had no power under section 7 to pass that sentence.”*

There is no dispute that the appeal before us is against severity of sentence and that is a matter of fact. The sentence that was passed by the trial court and affirmed by the first appellate court was a legal one. In the circumstances, this appeal does not lie and is hereby dismissed.

*Dated and Delivered at Nairobi this 28<sup>th</sup> day of February, 2014.*

**E. GITHINJI**

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**JUDGE OF APPEAL**

**J.W. MWERA**

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**JUDGE OF APPEAL**

**D.K. MUSINGA**

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**JUDGE OF APPEAL**

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

**REGISTRAR**

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