



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
CORAM: WAKI, KARANJA & J. MOHAMMED, JJ.A.
CRIMINAL APPEAL NO. 136 OF 2013

BETWEEN

FRANK MUIA MUTUAAPPELLANT

AND

REPUBLICRESPONDENT

(An appeal from the sentence of the High Court of Kenya at Machakos (Makhandia, J) dated 19th April, 2012

in

H.C.CR.C. NO. 35 OF 2011)

JUDGMENT OF THE COURT

FRANK MUIA MUTUA, the appellant was, upon his plea of guilty to a charge of manslaughter contrary to **Section 202 as read with Section 205 of the Penal Code, Chapter 63, Laws of Kenya** convicted and sentenced to ten years imprisonment. It had been alleged before the trial court that:

“FRANK MUIA MUTUA: On the 11th day February, 2011 at Mukoka village, Utithi Sub-location, Kibwezi District within the Makueni County unlawfully killed JOSEPH MUSYOKAKATHANGA’U.”

At the hearing of the appeal, the appellant was unrepresented and pleaded for reduction of the sentence contending that he had reconciled with the family of the deceased; that he had already paid half of the agreed customary compensation; that he was remorseful and had reformed.

Miss Mary Oundo, (ADPP) for the State opposed the appeal and submitted that the appellant pleaded guilty to the offence of manslaughter; that **Section 348 of the Criminal Procedure Code** precludes him from appealing against sentence; that the sentence of 10 years was legal and lenient.

We have considered the record of appeal, the submissions and the law. The record indicates that the appellant is a first offender and the family's sole breadwinner. That notwithstanding, however, we cannot overlook the fact that by the appellant's careless act, an innocent life was lost.

The issue that is before us is whether the sentence meted out against the appellant by the trial court was excessive; and whether we can interfere with the same.

The principles upon which this Court will act in exercising its discretion to review or alter a sentence imposed by the trial court were stated in the case of **OGOLLA S/O OWUOR, (1954) EACA 270** as follows:

“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors”. To this, we would add a third criterion namely, “that the sentence is manifestly excessive in view of the circumstances of the case (R v Shershowsky, (1912) CCA 28TLR 263).” See also Omuse v R, (Supra) while in the case of Shadrack Kipkoech Kogo v R., Eldoret Criminal Appeal No. 253 of 2003 the Court of Appeal stated thus:

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 failed to take into account a relevant factor or that a wrong principle was applied or that short of these, the sentence itself is so harsh and excessive and that an error in principle must be inferred (see also Sayeka v R, (1989 KLR 306).”

Further, in **GRIFFIN V R, CRIMINAL APPEAL NO. 185 OF 1998 (UR)** it was stated that:

“The Court of Appeal cannot interfere with the sentence solely on the ground that it was heavy, unless it was also manifestly excessive.”

In the instant case, the learned trial judge took into account all the relevant factors before sentencing the appellant and stated:

“I have considered the mitigation offered. However, I am not obvious (sic) to the fact that as a result of the callous acts of the accused, an innocent life was lost. That the families may have agreed on compensation but that will not bring back the lost life. From the facts, the accused was bent on robbing the deceased and was determined to do so at whatever cost, including even the loss of life.”

In the circumstances of this case, there is no basis upon which we can interfere with the sentence meted out. At all events there is a caveat under **Section 348, Criminal Procedure Code**, which provides as follows:

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.”

The upshot of the foregoing is that we find that the appeal has no merit and it is hereby dismissed.

Dated and delivered at Nairobi this 24th day of October, 2014.

P. N. WAKI

JUDGE OF APPEAL

W. KARANJA

JUDGE OF APPEAL

J. MOHAMMED

JUDGE OF APPEAL

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

DEPUTY REGISTRAR