



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: MUSINGA, GATEMBU & J. MOHAMMED JJ.A.)

CRIMINAL APPEAL NO. 159 OF 2011

BETWEEN

STEPHEN NZOMO NZAU APPELLANT

AND

REPUBLICRESPONDENT

***(Being an appeal from a sentence and a ruling delivered at the High Court of Kenya Machakos
Lenaola J. dated 29th October, 2009***

in

H.C.CR. C. NO. 110 OF 2008)

JUDGMENT OF THE COURT

1. The appellant, Stephen Nzomo Nzau, was initially charged with the offence of murder contrary to section 203 and 204 of the Penal Code to which he pleaded not guilty. The charge was subsequently substituted with manslaughter contrary to sections 202 and 205 of the Penal Code. The particulars of the offence are that on 9th December 2008 at Ngumi Village, Kivaani location, Kangundo District of Eastern Province, the appellant unlawfully killed Benard Mutuku Kasyula.
2. The appellant was arraigned before the High Court at Machakos on 10th June 2009 where he pleaded guilty to the charge of manslaughter. Having taken into account the facts of the case and the circumstances under which the offence was committed, the appellant's mitigation and the report by the Probation Officer, the High Court, (Lenaola J.), sentenced the appellant to serve ten years in prison.
3. The appellant has moved this Court with a plea that the sentence be quashed and that he be set at liberty on the grounds that he pleaded guilty to the charge; that he is remorseful; that he is unwell and suffering from stomach ulcers; that he has a family and is the sole breadwinner and that the sentence is excessive. When the appellant appeared before this Court for the hearing of the appeal,

- he urged us to have regard to those mitigation factors, set aside the sentence and grant him liberty.
4. Mr. Jacob Ondari, learned counsel for the state on his part submitted that the appeal cannot be entertained as the appellant pleaded guilty to the charge. He further submitted that the appellant's appeal is tantamount to mitigation which is a matter touching on the severity of the sentence which is outside the mandate of this Court and that the sentence imposed by the High Court is legal. He urged us to dismiss the appeal.
 5. Under section 379(3) of the Criminal Procedure Code:

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

6. As we have already observed, the appellant pleaded guilty to the charge of manslaughter and was convicted on that plea by the High Court. Under section 205 of the Penal Code, the appellant was liable to imprisonment for life. The sentence imposed by the High Court is therefore legal. The sentence is also lenient in our view.
7. Accordingly the appellant's appeal fails and is hereby dismissed.

Dated and delivered this 19th day of July 2013.

D. K. MUSINGA

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JUDGE OF APPEAL

S. GATEMBU KAIRU

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JUDGE OF APPEAL

J. MOHAMMED

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR