



IN THE COURT OF APPEAL
AT NAKURU

(CORAM: OMOLO, GITHINJI & VISRAM, JJA)

CRIMINAL APPEAL NO. 408 OF 2007

BETWEEN
FRANCIS EKIRU EIYAN APPELLANT
AND

REPUBLIC RESPONDENT

(An appeal from a conviction and sentence of the High Court of Kenya at Nakuru (Kimaru, J) dated 14th February, 2007

In

H.C. Cr. C. No. 58 of 2006)

JUDGMENT OF THE COURT

The appellant, Francis Ekiru Eiyen, was convicted on his own plea of guilty to the charge of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code and sentenced to a term of **12 years** imprisonment by the High Court (Kimaru, J) on **14th February, 2007**.

The facts that gave rise to the plea of guilty were as follows:-

On 3rd August, 2006, the deceased's wife, Siti Lengope (Siti), collected the deceased's salary of Sh.10,000/- from the D.O.'s office at Maralal, and then went looking for him to hand over the money to him. She found him at Soko Mjinga, within Maralal township, handed him the money, then accompanied him to a chang'aa drinking den where they were joined, in the drinking of chang'aa, by two men, one of whom was the appellant. At some point, the two men – the appellant, and his unidentified accomplice, began attacking the deceased, kicking him in the chest and stomach. At this point, Siti ran away, leaving her husband being beaten. Eventually, the two attackers robbed the deceased of the money he had, and disappeared. The deceased managed to walk home, bleeding profusely. He did not seek any medical treatment and died the following morning. The police arrived and took the body to the hospital. Dr. Too of the Maralal District Hospital conducted the post-mortem on the body and concluded that the deceased died of cardiopulmonary arrest due to the injuries sustained.

The appellant was charged with the offence of murder contrary to **sections 203** and **204** of the Penal Code. He subsequently pleaded guilty to the offence of manslaughter, and as we have stated before, he was sentenced to 12 years in prison. In meting out that sentence, the learned Judge considered what was said in mitigation by counsel on behalf of the appellant, that he was only 23 years of age; that he had two young children and elderly parents, all of who depended on him; and that he was suffering from Tuberculosis.

At the hearing before us, the appellant simply asked us to reduce the sentence of 12 years imprisonment which he said was harsh.

Section 379 (3) of the Criminal Procedure Code states:-

“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.”

Clearly, the sentence which was imposed on the appellant is lawful. The learned Judge had the jurisdiction and the power to impose a life sentence, as provided for in **section 205** of the Penal Code. However, he imposed a sentence of 12 years imprisonment. The sentence is lawful and it cannot be said that the learned Judge erred in principle when he settled for 12 years imprisonment. Although we have the power to interfere with the “*extent*” of the sentence, we could only do so where special circumstances are shown to exist or where it is clear that there was an error in principle in arriving at the sentence. None was pointed out, nor do we find any to justify interfering with the sentence. The sentence cannot be said to be harsh or excessive.

Accordingly, and for the reasons stated, we find no merit in this appeal and dismiss the same. It is so ordered.

Dated and delivered at Nakuru this 13th. day of January, 2012.

R.S.C. OMOLO

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JUDGE OF APPEAL

E.M. GITHINJI

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JUDGE OF APPEAL

ALNASHIR VISRAM

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR.