



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAKURU

(CORAM: OMOLO, O’KUBASU & VISRAM, JJ.A)

CRIMINAL APPEAL NO. 412 OF 2007

BETWEEN

JENIFFER AKINYI OMONDI APPELLANT

AND

REPUBLIC RESPONDENT

(An appeal from a conviction and sentence of the High Court of Kenya at Nakuru (Kimaru, J) dated 17th May, 2007

In

H.C. Cr. C. No. 94 of 2006)

JUDGMENT OF THE COURT

The appellant, Jennifer Akinyi Omondi, was convicted on her 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 10 years imprisonment by the High Court (Kimaru, J) on 17th May, 2007.

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

At the material time the appellant was aged 25 years, and a mother of five children, two of whom aged four and three, being her own, while the other three were her step-children. On 4th November, 2006 her husband left for work as usual, in the early morning, leaving all five children in her care. At some point that morning, the appellant assigned some household duties to the deceased, her step-daughter aged six, together with her other step-daughter. The deceased stumbled upon some furniture, apparently causing the appellant to be annoyed. The appellant grabbed the deceased, locked her up in a room, and began beating up the child. The other step-child, who was outside the room, heard the deceased say, “*Woi mama, stop beating me, Nitatii walimu wangu – woi, you will kill me!*”

Thereafter, the screams stopped. The appellant opened the door and took the deceased child to her room, laid her on bed and covered her with a blanket. She then warned all the children not to disturb the deceased; not to say anything to their father; and simply to say that the deceased was sick.

The appellant then proceeded to inform her pastor of the incident. The pastor came over to the house; saw the deceased child, then reported the same to the area- chief. Police officers from Bondeni Police Station

came over, removed the body to the hospital, and arrested the appellant. Dr. Gachinga conducted the post-mortem on the body and concluded that the cause of death was cardiopulmonary arrest due to the injuries inflicted.

The appellant was charged with the offence of murder contrary to **sections 203 and 204** of the Penal Code. She subsequently pleaded guilty to the offence of manslaughter, and as we have stated before, she was sentenced to 10 years imprisonment. In meting out that sentence, the learned Judge (Kimaru, J) considered what was said in mitigation by counsel on behalf of the appellant, that she was only 25 years of age; that she has young children that needed her care and attention; that she was remorseful and never actually intended to kill the deceased and had only intended to discipline her.

At the hearing before us, the appellant repeated similar sentiments, emphasizing that she had learnt her lesson, that she wants to pursue further education and pleaded that we reduce the sentence of 10 years imprisonment which she 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 10 years imprisonment. The sentence is lawful and it cannot be said that the learned Judge erred in principle when he settled for 10 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. O. O’KUBASU

.....
JUDGE OF APPEAL

ALNASHIR VISRAM

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR.