



IN THE COURT OF APPEAL  
AT NAKURU

(CORAM: BOSIRE, WAKI & ONYANGO OTIENO, JJ.A.)

CRIMINAL APPEAL NO. 63 OF 2009

BETWEEN

BETTY KIRUI CHEROTICH ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

*(Appeal from a conviction and sentence of the High Court of Kenya at Nakuru (Koome, J.) dated 17<sup>th</sup> March, 2009*

in

H.C.CR.C. No. 722 of 2008)

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JUDGMENT OF THE COURT

This is a first appeal. The appellant, **Betty Kirui Cherotich**, was arraigned in the High Court at Nakuru on an Information dated 4<sup>th</sup> December, 2009, with the offence of murder contrary to **Section 203** as read with **Section 204** of the Penal Code. The particulars of the charge were that:-

**BETTY KIRUCHEROTICH**

***“On the 20<sup>th</sup> day of November 2008, at Kapkembu Village in Molo District within Rift Valley Province, murdered Emmanuel Kibet.”***

When she appeared in court on 4<sup>th</sup> December, 2008, the plea was not taken as the learned Judge was apparently not in Court. The Chief Magistrate fixed the plea for 5<sup>th</sup> December, 2008. On that date, the appellant pleaded not guilty to the charge of murder but his counsel, Mr. Wambeyi, requested for a mention date to facilitate plea bargaining. The case was then mentioned from time to time until 18<sup>th</sup> February, 2009, when a fresh Information dated 4<sup>th</sup> February, 2009 was presented to the Court by the Attorney General. This time she was charged with the offence of manslaughter, the particulars of which were that:-

***“On the 20<sup>th</sup> day November (sic) 2008 at Kapkembu Village in Molo District of Rift Valley Province, unlawfully killed Emmanuel Kibet.”***

On 17<sup>th</sup> March, 2009, the appellant was arraigned in Court on that Information and the appellant pleaded guilty to that charge of manslaughter. The facts were read out to the appellant and she accepted that the facts were correct. She was thereafter convicted of the offence of manslaughter on her own plea of guilty. The prosecution asked the Court to treat her as a first offender as they did not have her past records. Mr. Wambeyi then addressed the court in mitigation on her behalf. The court thereafter considered the facts and the mitigating aspects and having done so, sentenced her to a term of **ten (10) years** imprisonment. She was not satisfied with that sentence and hence this appeal which is against sentence only. In her grounds of Appeal, the appellant pleads for reduction of her **ten (10) years** imprisonment term on grounds that she is a single mother with two children for whom she is the breadwinner; that she committed the offence because of the brutality of her husband to her; that she is an orphan and her mother is a peasant farmer; that the sentence is harsh and excessive and that she is not aware whether her mother took her children from where she left them when she was arrested for this offence. Before us, she asked for forgiveness and presented a written submission in which she explained what led to her committing the offence which was mainly that her husband frustrated her as he often times abandoned her to go to the house of another woman whose house she burnt, not knowing that the victim, a child was inside that house. She again sought mercy in that written submission.

Miss Idagwa, the learned State Counsel, opposed the appeal, submitting that the sentence was lenient considering that the maximum sentence for the offence the appellant committed was Life Imprisonment. She contended that the learned Judge considered all aspects of the matter and arrived at a fair and proper sentence.

We have anxiously considered the appeal. The facts that were admitted by the appellant and which were considered by the trial court were, as set out in the record, that:-

***“The accused had a grudge with a lady called Agnes Cherutich whom she suspected had an affair with her husband. The accused decided to burn Agnes’s house on 20<sup>th</sup> November, 2008, she went to the house at about 11 a.m. and set it on fire. Unfortunately, Agnes had left a child, a boy aged 2½ years sleeping in the house. As the house burnt, the child also burnt down. When the accused realized there was a child in the house, she went to the Chief’s Officer (sic) where she surrender (sic) and was handed to the police. She was examined and found to be mentally fit. The Police collected the body of deceased and took it at Molo District Hospital where a post mortem was done.”***

The post mortem report was produced and it confirmed that the victim died as a result of the injuries received from the fire which burnt him and the house.

The maximum sentence for the offence of manslaughter is life imprisonment. The sentence that was awarded as we have stated is ten years imprisonment. That sentence is lawful and is well below the maximum allowed by the law. We have, on our own, as a first appellate court considered the mitigating factors such as the allegation that the appellant needs to be free to take care of her children; that she committed the offence as a result of frustrations by her husband, and that she is remorseful. However, against all that is the stark fact that as a result of her reckless action, a young life was lost. In our view, we do not, in the circumstances of this case, find any good grounds to interfere with the discretionary powers of the trial court, which we hold was properly exercised.

The appeal lacks merit. It is dismissed.

***Dated and delivered at Nakuru this 23<sup>rd</sup> day of February, 2012.***

**S.E.O BOSIRE**

.....  
**JUDGE OF APPEAL**

**P.N. WAKI**

.....  
**JUDGE OF APPEAL**

**J.W. ONYANGO OTIENO**

.....  
**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**