IN THE COURT OF APPEAL
AT NAKURU

CORAM: BOSIRE, ONYANGO OTIENO & NYAMU, JJ.A.

CRIMINAL APPEAL NO. 182 OF 2008

BETWEEN
JACOB NABANYI…………………………………………..APPELLANT

AND
REPUBLIC…………………....…………………………RESPONDENT

(Appeal from a conviction and sentence of the High Court of Kenya at Nakuru (Koome, J) dated 16th October, 2008

in

H.C.CR.C. NO. 34 OF 2008)

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JUDGMENT OF THE COURT

This is an appeal against sentence only. The appellant pleaded guilty when he was arraigned before the High Court on the lesser charge of manslaughter contrary to ***Section 202*** as read with ***Section 205*** of the Penal Code having originally been charged with murder in the same court. The particulars of the charge as contained in the information dated 13th October, 2008 were that:-

"On the 5th day of May, 2006 at Tree Top Village Wamba in Samburu District within Rift Valley Province, unlawfully killed Pius Ego."

The facts that were read to the court and which the appellant admitted were that on 5th May, 2006, at about 11.00 a.m., the appellant and the deceased went to a bar. They drank alcohol and chewed *miraa* for sometime. They then went outside and they started to argue between themselves on some issue. That argument developed into a fight between the two of them. As they were being separated, the appellant, who was armed, stabbed the deceased in the abdomen. The deceased fell down as the appellant ran away. The deceased was rushed to Wamba Hospital where he died while undergoing treatment. The appellant was arrested by members of the public who handed him over to Wamba Police Station. Postmortem was done on the deceased and it was confirmed that the cause of the death was circulatory shock due to haemorhage. The appellant was, on medical examination found to be fit to plead.

On the above facts being admitted by the appellant, the court found him guilty of the offence of manslaughter, convicted him and sentenced him, after considering mitigating factors to imprisonment for a term of eight (8) years. He is not satisfied with that and hence this appeal in which he preferred six

grounds all pleading for the reduction of the sentence on grounds that it is harsh and excessive when it is considered that he was a first offender; that he is the breadwinner for his poor family; that the prison conditions are grossly inhuman and that it is not in the interest of justice to award such a sentence. He conducted his appeal in person before us. In his oral submissions before us, he maintained that he did not intend to kill the deceased who was his friend, that the incident happened through bad luck; and that since then he has learnt a lot in prison as he is now able to read and write and is now a qualified carpenter. He thus pleaded for leniency contending that he has fully reformed.

Miss Idagwa, the learned state counsel opposed the appeal and submitted that the sentence of eight (8) years imprisonment was lenient and fair when it is considered that the maximum sentence for the offence is life imprisonment and also when it is considered that the appellant, though drunk at the time he committed the offence, was nonetheless reckless in his action of stabbing the deceased with a knife.

This is a first and last appeal. Apart from the facts that gave rise to the offence narrated above, the High Court was told in mitigation that the appellant was remorseful, apologetic and regretted the death of the deceased; that the appellant was at that time (16th October, 2008) aged 26 years and had been in custody for 2½ years; that he was married with three children and that he was the sole breadwinner of the family together with his mother and other members of his immediate family. The learned Judge considered all that together with the fact that the two had been drinking together when a disagreement ensued between them. We have, on our own considered the record, the submissions both before us and those advanced in the High Court. We have also considered the circumstances of the entire case and of the appellant. We have also considered that life of a young man was lost all because of recklessness of the appellant and that the maximum sentence for the offence he faced is life imprisonment whereas he escaped with eight years imprisonment only. We have lastly considered the provisions of ***Section 379(3)*** of the Criminal Procedure Code.

In our view, considering all the above as we have done, we do not have any reason to fault the manner in which the learned Judge exercised his discretion in this matter. The sentence, the court awarded was lawful and indeed lenient in the circumstances of the case and of the appellant.

We decline to interfere with the sentence that was ordered by the High Court. It will stand. The appeal lacks merit. It is dismissed.

DATED and DELIVERED at NAKURU this 23RD day of FEBRUARY, 2012.

S.E.O. BOSIRE

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JUDGE OF APPEAL

J.W. ONYANGO OTIENO

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JUDGE OF APPEAL

J.G. NYAMU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR