



**IN THE COURT OF APPEAL
AT NAKURU
(CORAM: WAKI, ONYANGO OTIENO & NYAMU, J.J.A.)
CRIMINAL APPEAL NO. 136 OF 2009
BETWEEN**

**LOJARU LENKALAANI APPELLANT
AND
REPUBLIC RESPONDENT**

*(Appeal from a conviction and sentence of the High Court of Kenya at Nakuru (Maraga, J) dated 25th
June, 2009
in
H. C. CR.C.NO.59 OF 2006)*

JUDGMENT OF THE COURT

The appellant was on 28th August, 2006 arraigned before the High Court in Nakuru for the offence of murder contrary to **section 203** as read with **section 204** of the Penal Code. His trial with the aid of assessors commenced and the prosecution called three witnesses to testify before the case was adjourned for further hearing. It is at that stage that the appellant offered to plead to the lesser offence of manslaughter and the offer was accepted by the prosecution. The charge of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code was substituted on 16th June, 2009, alleging that the appellant did on 17th November, 2005 at Sesia Sub-location, Wamba, in Samburu District, Rift Valley Province, unlawfully kill Loponin Lentadanya. He pleaded guilty to that charge and further, freely accepted as truthful, the following facts as put forward by the prosecution:-

***“On 17th November, 2005 at about 8.30 a.m the accused went to the deceased’s house and asked him to his house (sic). When they got into his house, accused alleged that deceased was seducing accused’s wife when he was away in Nairobi. A fight erupted. Deceased ran out of the house. Accused picked up a sword and chased the deceased. When he caught up with him he cut him on the neck killing him on the spot.*”**

Accused ran away but he was later arrested by police. The body was taken to Maralal mortuary. Post mortem revealed the cause of death as trauma to the spinal code due to sharp cut wound. This is the post mortem report – Ex. 1. This is also a certificate of accused’s fitness to stand trial – Ex. 2”.

He was convicted accordingly and an opportunity was given to him for mitigation before sentence. Learned counsel for him at the time stated thus:-

“Accused is very remorseful. He has been in custody since September 2006 during which he has considered his act. He is married with one child. As he is an orphan, his family have nobody to take care of them. He has been converted to Islam. He prays for a lenient sentence.”

Upon considering the circumstances surrounding the offence and the mitigating factors advanced on behalf of the appellant, the learned trial Judge (Maraga, J, as he then was) sentenced him to serve five years imprisonment.

The appellant was aggrieved by that sentence and now comes before us in person pleading that the sentence was excessive and did not consider the mitigating factors; that he had spent three years in custody before his trial commenced; that he was an orphan looking after his sister, his wife and two children; that he had suffered stress in prison; that he was a first offender and that he had no intention of killing the deceased. He prayed for reduction of the sentence. In opposing the appeal, learned State Counsel Ms. Nerolyne Idagwa, submitted that the issues raised on appeal were raised and properly considered before the trial court. In her view, the sentence of 5 years was lenient since the law provides for a maximum life imprisonment for manslaughter.

As this is a first appeal, this Court has the jurisdiction to hear and determine a challenge on sentence. Sentencing, however, is a matter of discretion for the trial court, and this court has stated severally, that it will not interfere with such discretion unless it appears that in assessing sentence the trial court acted on some wrong principle or did not act on some correct one or has imposed a sentence which is manifestly excessive – see *Ogalo Owuora vs Republic [1954] 21 EACA 270 (CA-K)* and *Muoki vs Republic [1985] KLR 325*. The trial court had the discretion to impose a maximum sentence of life imprisonment for the serious crime which the appellant freely admitted. We are satisfied that the Judge fully considered the mitigating circumstances put forward by the appellant’s counsel and also considered the circumstances surrounding the offence before meting out the sentence of five years. It was a lawful sentence, though lenient in the circumstances as correctly observed by Ms. Idagwa, and we have no reason to interfere with it. The appeal is rejected in its entirety and the sentence is upheld.

It is so ordered.

Dated and delivered at Nakuru this 23rd day of February, 2012.

P. N. WAKI

.....
JUDGE OF APPEAL

J. W. ONYANGO OTIENO

.....
JUDGE OF APPEAL

J. G. NYAMU

.....
JUDGE OF APPEAL

I certify that this isa true copy of the original.

DEPUTY REGISTRAR