



**IN THE COURT OF APPEAL  
AT NAKURU**

**(CORAM: BOSIRE, ONYANGO OTIENO & NYAMU, J.J.A.)**

**CRIMINAL APPEAL NO. 95 OF 2009**

**BETWEEN**

**SAMUEL KAMAU ALIAS KAKA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

***(Appeal from a conviction and sentence of the High Court of Kenya at Nakuru (Koome, J.)***

***in***

***H.C.CRC. NO. 6 OF 2008)***

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**JUDGMENT OF THE COURT**

In an information presented to the High Court at Nakuru as the trial Court on 22<sup>nd</sup> January, 2008, the appellant was charged with the offence of murder contrary to **sections 203** and **204** respectively of the *Penal Code*. The particulars of the charge were that on the 27<sup>th</sup> day of August, 2006, at Narok Township in the then Narok District of the Rift Valley Province, he murdered Bashir Ali. On 27<sup>th</sup> February, 2008, he entered a plea of not guilty. However, on 14<sup>th</sup> April, 2008, the appellant indicated that he was ready and willing to plead guilty to the lesser charge of manslaughter but on 6<sup>th</sup> May, 2008, the appellant's offer was rejected by the State and the matter set down for hearing on 16<sup>th</sup> June, 2008. Thereafter, the hearing did not take place on three appointed hearing dates mainly due to the inaction on the part of the prosecution; and on 16<sup>th</sup> October, the appellant, through his advocate, repeated the earlier offer of pleading to the lesser charge of manslaughter and on the same day, a charge of manslaughter was accordingly substituted, whereupon, the appellant entered a plea of guilty to it.

The facts as presented by the prosecution, were that on 27<sup>th</sup> August, 2006, the deceased, **Bashir Ali**, who was in the company of his friend Abdi visited Abdi's girlfriend's house where they stayed for a few minutes. Suddenly at the door of the Abdi girlfriend's house, they met the appellant. At that point, Abdi noted that the appellant had a knife protruding out of the jacket he had on and when he was asked why he was carrying the knife the appellant removed the knife with the intention of stabbing Abdi but the deceased intervened with a view to preventing the stabbing of Abdi. After a brief struggle, the appellant stabbed the deceased on the neck resulting in the immediate collapse and death of the deceased.

It is common ground that when the prosecution narrated the facts as reproduced above, the appellant accepted them as true and after presenting what appears to us to have been a moving mitigation, in which he inter alia stated that he was an orphan and that he was taking care of 7 siblings, the court sentenced him to ten years imprisonment.

In his appeal, the appellants main ground is a plea to this Court to reduce the sentence.

On our part, we have considered the appellant's plea to reduce the sentence. However, taking into account the special circumstances of the matter before us, we take the view that the sentence imposed was appropriate and lawful and for those reasons, we have been unable to find any valid grounds to justify an intervention by us. We accordingly uphold the sentence as imposed by the High Court. The appeal is dismissed.

*Dated and delivered at NAKURU this 23<sup>rd</sup> 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**