



IN THE COURT OF APPEAL  
AT NAIROBI

CORAM: O'KUBASU, ONYANGO OTIENO & KOOME, J.J.A.

CRIMINAL APPEAL NO. 31 OF 2008

BETWEEN

FRANCIS MUANGE MOSE

JOHN MULI MUTAVI ..... APPELLANTS

AND

REPUBLIC ..... RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Machakos (Lenaola, J) dated 6<sup>th</sup>  
February, 2008

in

HCCR.C NO. 28 OF 2008)

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JUDGMENT OF THE COURT

Both **FRANCIS MUANGE MOSE** and **JOHN MULI MUTAVI** were charged before the High Court, Machakos with the offence of murder contrary to **Section 203 as read with Section 204 of the Penal Code**. They however, pleaded guilty to a lesser charge of manslaughter contrary to **Section 202 as read with Section 205 of the Penal Code**. Upon being convicted with the offence of manslaughter, they were each sentenced to eight years' imprisonment. They have now appealed against the severity of the sentence.

The summary of the facts are that on 22<sup>nd</sup> July, 2006, at about 10 pm, the two appellants who were friends, were walking from the local market. Along the way, they met the deceased whom they alleged had stolen from them some unspecified items. The two appellants started beating the deceased while demanding that he returns to them their items. One **Musyoka Ngui** and **Mulei Kanungulu** who were also walking along the same path, found the appellants beating the deceased. They intervened and stopped the appellants.

By that time, the deceased had sustained injuries, so Musyoka and Mule took him first to Sultan Hamud clinic. The next day, they transferred him to Machakos General Hospital. The deceased's condition deteriorated and he was transferred to Kenyatta National Hospital, where he died four days later on 26<sup>th</sup> July, 2006. A post mortem examination was carried out on 7<sup>th</sup> August, 2006, and the cause of death was found to be as a result of a head injury due to blunt force. The appellants were arrested on 9<sup>th</sup> November, 2006, and charged with the offence of murder which was reduced to manslaughter.

The appellants appealed against their respective sentences and urged the court to consider that they are young men who have families for which they are the breadwinners. They also told us they have reformed during the time they have been incarcerated and had taken up some vocational training to help them in future. The order made by the learned trial judge took into account those mitigating factors before passing a sentence of eight years. Mrs Murungi, the learned Deputy Prosecution Counsel, submitted that the sentence imposed on the appellants was not excessive nor was it harsh.

We agree with the State Counsel that an appellate court is only entitled to interfere with the sentence if the trial court failed to take into account a relevant factor or took into account an irrelevant factor and thus passed a harsh and excessive sentence.

In this case, the sentence of eight years cannot be said to be harsh or excessive, the appellants are merely seeking for leniency.

We find the sentence was neither harsh nor excessive in the circumstances of the case. In the result, the appeal is dismissed.

**Dated and delivered at Nairobi this 3<sup>rd</sup> day of February, 2012.**

**E. O. O’KUBASU**

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**JUDGE OF APPEAL**

**J. W. ONYANGO OTIENO**

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**JUDGE OF APPEAL**

**M. K. KOOME**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**