



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAKURU**  
**CORAM: O’KUBASU, GITHINJI & AGANYANYA, J.J.A.)**  
**CRIMINAL APPEAL NO.418 OF 2007**

**BETWEEN**

**SIMON OBARE GECHEO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal against sentence of the High Court of Kenya at Nakuru (Kimaru, J.) dated 23<sup>rd</sup> October, 2007*

*in*

***H.C.C.R.C.NO.8 OF 2004)***

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**JUDGMENT OF THE COURT**

The appellant was charged before the High Court at Nakuru with the offence of murder contrary to **section 203** as read with **section 204** of the Penal Code. The Particulars of the offence alleged that, on 9<sup>th</sup> September, 2002 the appellant unlawfully killed Elijah Gesame Mirieri. The appellant pleaded not guilty to the charge and the date for trial was fixed. On 7<sup>th</sup> July 2004, the trial started with the aid of the assessors as the law then required. That requirement has now been repealed. The prosecution called five witnesses over a period of 1½ years but ultimately the assessors failed to attend court leading to a declaration by the trial Judge of a mistrial and an order that the trial do start de novo. But when the trial resumed at a later date, the appellant’s counsel indicated that the appellant was willing to plead guilty to a lesser charge of manslaughter.

The charge was substituted and the appellant pleaded guilty to the charge of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code and was sentenced to 8 years imprisonment.

The appellant appeals against sentence on two grounds, namely, that the court did not consider that the appellant was a first offender and that the court did not consider the 4 years spent in remand. The appellant further stated in the memorandum of appeal that he is remorseful and sickly.

At the hearing of the appeal, the appellant told us that he was satisfied with the sentence meted

against him but asked us to have clemency on him and reduce the sentence by one or two years.

It is clear from the record that the trial Judge, indeed, considered the fact that the appellant was a first offender and that he had been in custody for 4 years. Thus we agree with Mr Omwega the learned Principal State Counsel that the trial Judge took into account all pertinent circumstances.

This is a case where the appellant viciously attacked the deceased at night with a panga when the deceased was asleep for no good reasons. The deceased sustained deep multiple cut wounds on the head leading to severe haemorrhage, shock and resultant death.

Having regard to all the circumstances of the case and the fact that the offence carries a sentence of life imprisonment we are satisfied that there are no grounds for interfering with the sentence. Indeed it is our view that the sentence was lenient.

For those reasons the appeal is dismissed.

***DATED and delivered at Nakuru this 22<sup>nd</sup> day of February, 2011.***

**E.O. O’KUBASU**

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**JUDGE OF APPEAL**

**E.M. GITHINJI**

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**JUDGE OF APPEAL**

**D.K.S. AGANYANYA**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**