



**IN THE COURT OF APPEAL
AT NAKURU**

(CORAM: TUNOI, GITHINJI & NYAMU, J.J.A.)

CRIMINAL APPEAL NO. 184 OF 2008

BETWEEN

JOSEPHAT KIPNGETICH KIRUI APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal From the judgment of the High Court of Kenya at Nairobi (Koome, J.) dated 18th April 2008

in

H.C.CR.C.NO.77 OF 2007)

JUDGMENT OF THE COURT

In the superior court the appellant ***Josphat Kipngetch Kirui***, was charged with unlawful killing of one ***Jackline Chepkorir Siele*** on 25th April, 2007 at Cheptuech village in Cheptuech Location of Molo District in the Rift Valley Province.

The plea was taken on 25th October, 2007 and the superior court (***Kimaru, J.***) entered a plea of not guilty. However on 6th March 2008 the prosecution substituted the earlier charge of murder with the lesser charge of manslaughter. Upon being asked to plead to the substituted charge the appellant pleaded guilty.

The background facts were that the appellant visited his relatives who included the deceased Jackline Chepkorir Siele. On 25th April 2007 at 7.00 p.m. the deceased and the appellant's daughter Cynthia were preparing a meal at the home of Kimeto, when the accused entered the house and ordered the deceased and Cynthia to switch off the radio. The deceased protested saying that she wanted to listen to news. In reaction to the protest the appellant got annoyed and started abusing the girls and at the same time picked a kitchen knife and stabbed the deceased in the stomach and ran out of the house. The deceased was taken to Kenyatta National Hospital on 1st August 2007 where she succumbed to death. A postmortem examination was performed on 10th August 2007 and it was established that the cause of her death was cardiac arrest due to cardio pulmonary arrest due to damage to the left lung.

In mitigation, the appellant's counsel submitted in the trial court that the appellant was aged 18 years and as the deceased was a relative of the appellant he would be haunted by the death and that the appellant killed the deceased under the influence of alcohol. Taking the aforesaid into account the

superior court (M. Koome, J.) sentenced the appellant to ten (10) years imprisonment.

Aggrieved by the sentence the appellant came to this Court by filing a memorandum of appeal which raises the following grounds:-

- 1) *That I pleaded guilty at plea.*
- 2) *That I am first offender.*
- 3) *That I am a young man in my early youth (sic) aged 18 years old.*
- 4) *That I am the only son in our family and that my father died way back in 1992.*
- 5) *That I most humbly beseech this honourable Court to consider substituting the sentence of ten years with a non-custodian sentence to enable me to go home at the earliest to fend for myself and prepare myself for adult life as my continued stay in prison is likely to affect me psychologically considering my tender age.*
- 6) *That the deceased was the wife of my cousin and that I am very remorseful of the offence committed as she came to separate us while fighting with her husband due to drunkenness.”*

The appellant who appeared in person during the hearing of the appeal repeated the grounds as outlined above. Mr A. J. Omutelema, learned Senior Principal State Counsel in his brief submissions opposed the appeal on the ground that the sentence imposed was neither harsh nor excessive taking into account the circumstances. He further stated that in his view the sentence was lawful.

On our part we have considered the appellant’s submissions and the submissions of Mr Omutelema. We think the sentence of ten (10) years imposed by the trial court was proper in that the learned Judge, did in our view take into account all the relevant factors including the mitigating circumstances which were restated before us by the appellant. In the circumstances, we find no merit in this appeal and it is hereby dismissed.

DATED and delivered at Nakuru this 21st day of February, 2011.

P.K. TUNOI

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JUDGE OF APPEAL

E.M. GITHINJI

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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