REPUBLIC OF KENYA
IN THE COURT OF APPEAL

AT NAKURU

(CORAM: BOSIRE, ONYANGO OTIENO & VISRAM, JJ.A)

CRIMINAL APPEAL NO. 140 OF 2009

BETWEEN

MICHAEL NYAKAGWA .....
APPELLANT

AND

REPUBLIC .....
RESPONDENT

(An appeal from a conviction and sentence of the High Court of Kenya at Nakuru (Maraga, J) dated 2nd July, 2009

In

H. C. Cr. C. No. 19 of 2009)
****

JUDGMENT OF THE COURT

Upon his own plea of guilty to a charge of Manslaughter contrary to ***section 202*** as read with ***section 205*** of the Penal Code, Michael Nyakagwa, the appellant, was sentenced by the High Court (Maraga, J) to a term of five (5) years imprisonment. He has come before us on a first appeal challenging severity of the sentence.

In his memorandum of appeal, the appellant has raised seven (7) grounds, namely, that he accidentally stabbed Iren Kwamboka; the deceased, who was his wife; he was a first offender; was remorseful and therefore the Court should be lenient to him; has eight (8) children aged between four (4) and thirteen (13) years who, because of the absence of their mother now need him to provide for their necessities of life; that the first child, a daughter, dropped out of school to look after her siblings and that his health has deteriorated because he is an ulcer patient, he is subjected to harsh circumstances in prison and because of injuries he sustained at the time the deceased attacked him with a kitchen knife.

All the foregoing factors were placed before the trial court and were taken into account in arriving at the sentence the appellant is serving.
The power of the Court on first appeal is donated by ***section 379 (3)*** of the Criminal Procedure Code, which provides thus::

"379 (3). No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been committed on that plea by the High Court, except as to the extent or legality of his sentence."

The appellant is not challenging his conviction but only the extent of his sentence. As stated earlier the appellant was sentenced to five (5) years imprisonment for the offence of manslaughter contrary to ***section 202*** as read with ***section 205*** of the Penal Code. The facts which were narrated to the court in support of that charge, and which the appellant accepted, may be briefly stated as under:-

The appellant and the deceased were cohabiting as husband and wife and lived at Upper Majengo in Narok town. On 8th February, 2009 at about 7.00 p.m. a disagreement arose between them as a result of which a quarrel ensued. Following that quarrel the appellant, in a fit of anger went into their kitchen and picked a kitchen knife which he used to stab the deceased in the stomach. The deceased tried to escape but the appellant pursued her and threw a stone at her which hit her on the head. A good Samaritan rushed her to hospital but she was pronounced dead on arrival. It would appear that the appellant sustained some injuries in the course of the fracas, and he too was taken to the same hospital for treatment.

A post mortem report on the deceased revealed that she sustained seven (7) clear cuts on the anterior of the abdomen, cut wounds across the back of the left arm, some cut wounds on the right knee, the small and large gut were punctured at various segments and there was massive haemoperitoneum. The cause of death is given as cardiac arrest due to severe haemorrhage, due to multiple sharp force trauma. The deceased clearly suffered severe injuries suggesting that the attack on her was vicious.

Maraga, J in sentencing the appellant stated that the appellant's attack on the deceased, his wife, with a knife was totally unjustified. We agree and add that the sentence of five (5) years imprisonment cannot by any standard, be said to be harsh and manifestly excessive as to call for interference. The appellant brutally killed his wife and notwithstanding the mitigation which he presented before the trial court and before us, this is a case in which the appellant deserved a severer sentence than the one which was meted out to him.

We wish to add that sentencing is a matter within the discretion of the trial judge, and upon our consideration of this matter, we find no basis for interfering with the exercise of judicial discretion by Maraga, J.

In the result we find no merit in the appellant's appeal, and accordingly dismiss his appeal. It is so ordered.

Dated and delivered at Nakuru this 21st day of April, 2011.

S.E.O. BOSIRE

.....

JUDGE OF APPEAL

J.W. ONYANGO OTIENO

.....

JUDGE OF APPEAL

ALNASHIR VISRAM

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR.