



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT NAIROBI**  
**(CORAM; BOSIRE, WAKI & AGANYANYA JJA.)**  
**CRIMINAL APPEAL NO. 111 OF 2007**

**BETWEEN**

**KATIWA MWANGANGI.....APPELLANT**  
**AND**  
**REPUBLIC.....RESPONDENT**

**(Appeal from a conviction, judgment, decree , order or as the case may be) of the High Court of Kenya at Machakos (Sitati J.) dated 29<sup>th</sup> June 2007**

**in**  
**H.C.CR.C. NO.55 OF 2006**

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**JUDGMENT OF THE COURT**

This is an appeal against sentence only. **Katiwa Mwangangi**, the appellant was convicted upon his own plea of guilty to the lesser charge of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code having been charged with the offence of murder contrary to **section 203** as read with **section 204** of the Penal Code, the particulars of which read as follows:

**“Katiwa Mwangangi: On the 27<sup>th</sup> day of September, 2006 at Kalulini Village Kisasi Location within Kitui District of the Eastern Province murdered Jackson Kilonzo Wambua.”**

When the appellant’s case was called on the date the case came up for hearing, the appellant offered and the State accepted his plea to the lesser charge of manslaughter as earlier on stated. The lesser charge was then read to him and the particulars thereof were explained. He admitted the charge and the facts in support thereof were narrated to him.

The summary of those facts were as follows: On 27<sup>th</sup> September, 2006 Jackson Kilonzo Wambua, the deceased, went on a drinking spree with several other people. Thereafter on his way to his home he passed by the appellant’s home. While there he shouted several abusive utterances against the appellant, who got incensed. While armed with a knife he confronted the deceased and told him, among other things, that his time on earth had come to an end. He then drew out the knife and stabbed the deceased on the right shoulder. The deceased raised an alarm and one Muthoka Sila responded to it and tried to rescue the deceased. The appellant turned against Muthoka Sila and chased him away. He then stabbed the deceased for the second time. The other villagers who responded to the deceased’s screams restrained the

appellant from further stabbing the deceased. A crowd built up and wanted to kill him but he managed to escape before they could get him.

Later, the next day, the deceased succumbed to his injuries and died. A post-mortem on his body conducted on 3<sup>rd</sup> October, 2006 revealed the cause of his death as Cardio-Pulmonary arrest due to secondary excessive bleeding.

The appellant was arrested and medically examined. He was found to be mentally stable and able to conduct his defence.

The appellant admitted those facts when they were put to him whereupon he was convicted as earlier on stated.

Mr. Kakonzi who represented the appellant during his plea submitted on his behalf in mitigation before sentence. He stated that the appellant was aged 46 years at the time, married with 6 children and the sole breadwinner of his family. Learned counsel further stated that the appellant was remorseful, the abuses which were directed at him by the deceased were vulgar Kamba words, and were extremely provocative. The appellant also suspected the deceased had been having an affair with his wife, and that provided further provocation. He had been in custody for seven months awaiting trial. The learned counsel on the basis of those facts urged the court to be lenient to the appellant.

It would appear to us that the Court (Sitati J.) deferred sentencing to await a probation officer's report. The probation officer, among other things, reported that the appellant was not a first offender, was not a straightforward person, his family background was that of a disorganized and indigent nature. The probation officer recommended that the appellant's was not a fit case for probation rehabilitation.

The record is however silent on whether the report was put to the appellant for comment or that he was given an opportunity to cross-examine the probation officer. This was a serious omission. In view of that and considering that the trial Judge used the report in arriving at the sentence which she meted out to the appellant, we think that the appellant's complaint before us that the sentence which was awarded to him was manifestly harsh is justified.

The appellant was sentenced to a term of 20 years imprisonment. In arriving at that sentence the trial Judge relied heavily on the probation officer's report. Mr. Monda, Principal State Counsel, did not think that the sentence is manifestly excessive even if the probation officer's report were to be ignored. In our view, however, it is not possible to speculate what sentence the trial Judge would have meted out had she not taken into account that report. The appellant's attack on the deceased was vicious and in a way premeditated in view of his statement to the deceased that his time on earth had come to an end. That notwithstanding, we think that a sentence of 17 years would have been more appropriate. Accordingly we allow the appellant's appeal to the extent of reducing his sentence from 20 years to 17 years from the date of his conviction by the High Court. It is so ordered.

**Dated at NAIROBI and delivered this 14<sup>TH</sup> day of OCTOBER. 2011.**

**S.E.O. BOSIRE**

.....  
**JUDGE OF APPEAL**

**P.N. WAKI**

.....  
**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**