



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CRIMINAL APPEAL NO. 302 OF 2008**

**JUSTIN KIPKOSGEI KIBITON ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

***(Appeal from a sentence and conviction of the High Court of Kenya at Nairobi***

***(Apondi, J) dated 30<sup>th</sup> April, 2008***

**In**

**H.C.CR.C. NO. 31 OF 2006)**

**\*\*\*\*\***

**JUDGMENT OF THE COURT**

The appellant was, after the trial, convicted of manslaughter, rather than murder of which he had been charged and on which he had been tried. He did not plead guilty to any charge. He was sentenced to seven years imprisonment. The appellant now pleads with us that we reduce the sentence largely on the basis that he was drunk and became irrational. The appellant was convicted of manslaughter simply because the Judge thought he was drunk. In sentencing him the Judge took into account all the relevant factors; he took into account the fact that the appellant was a first offender and the period for which he had been in custody awaiting his trial. Sentence is simply an exercise in discretion by a trial court and an appeal court can only interfere if in arriving at the sentence the trial court has failed to take into account a relevant factor or has taken into account an irrelevant factor, or looked at with regard to the surrounding circumstances the sentence is manifestly harsh and excessive. None of these factors are available to the appellant in this case. That the deceased died from secondary infection can really be neither here nor there. The secondary infection was caused by the stab-wound inflicted by the appellant and she died within a year and a day. It would be wrong for us to substitute the exercise of discretion by the Judge with our own discretion. There is no basis upon which we can interfere and we accordingly order that the appeal as to sentence be and is hereby dismissed.

Dated and delivered at Nairobi this 24<sup>th</sup> day of March, 2010.

**R.S.C. OMOLO**

.....

**JUDGE OF APPEAL**

**S.E.O. BOSIRE**

.....

**JUDGE OF APPEAL**

**ALNASHIR VISRAM**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**