



IN THE COURT OF APPEAL

AT NAIROBI

CRIMINAL APPEAL NO. 186 OF 2009

BETWEEN

KILONZO KITHUNGA..... APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from a conviction and sentence of the High

Court of Kenya at Machakos (Lenaola J.) dated 10th

December 2008

in

H.C.CR.C NO. 96 OF 2008

JUDGMENT OF THE COURT

The appellant was convicted of the lesser charge of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code, having initially been charged with the offence of murder contrary to **section 203** as read with **section 204** of the Penal Code. Before he was sentenced, the trial Judge (Lenaola J.), requested for and was given a probation officer's report on the appellant which was adverse to him. In the report the probation officer noted that the appellant is known to have a violent temperament, had threatened family members with death, and had on several occasions attempted to shoot one of his sons known as **Nzomo**, with an arrow.

The trial Judge upon reading the probation officer's report and his recommendation that the appellant's was not a fit case for probation, decided to sentence him to an imprisonment term of 10 years.

In his appeal he challenges the sentence and complains that it is too severe. He pleaded with us to consider reducing it on the grounds that he is an old man, and that he accidentally killed **Peter Mwalima**

Kilonzo, who was his son.

We have considered the appellant's appeal. Sentence is a matter for the discretion of the court and as an appellate court, we can only interfere with it if satisfied that the trial court failed to take into account a relevant factor or took into account an irrelevant factor or that when all circumstances are taken into account, the sentence is manifestly excessive. We are not satisfied that the trial Judge erred in any way. The appellant killed his own son, merely for the simple reason that he cut his trees. It is also clear that the trial Judge took into account the appellant's past conduct which he gathered from the probation officer's report.

In the circumstances, we do not consider there is any basis for interfering with the sentence imposed on the appellant. Accordingly we dismiss his appeal. Order accordingly.

Dated and delivered at Nairobi this 24th day of March, 2010.

R.S.C. OMOLO

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JUDGE OF APPEAL

S.E.O. BOSIRE

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JUDGE OF APPEAL

ANALSHIR VISRAM

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR