IN THE COURT OF APPEAL OF KENYA
AT NYERI

CRIMINAL APPEAL 75 OF 2009

BETWEEN

SAMUEL KARANJA MBURU .....APPELLANT
AND
REPUBLIC .....RESPONDENT

(Appeal from a conviction and sentence of the High Court of Kenya at Nyeri (Kasango, J.) dated 19th January, 2009

in

H.C.CR.C. NO. 50 OF 2009)
****
JUDGMENT OF THE COURT

The appellant in this appeal was initially charged with the offence of murder contrary to ***section 202*** as read with ***205*** of the Penal Code. However in the course of the proceedings, upon request by the appellant's counsel, a fresh information on manslaughter charge was substituted and on 14th January 2009 after the substitute of the charge of manslaughter and after every element of the offence was explained to the appellant, he pleaded guilty to the lesser charge of manslaughter. He was sentenced to nine years imprisonment.

The story behind this appeal is a sad one because it involves a son killing his own father. On 1st September 2008 at about 8.30 p.m. the appellant Samuel Karanja Mburu came back home at Naaro village within Muranga South District. He was evidently drunk. He could not open the door to his house apparently because he had lost the key. In his drunken state he reacted to the situation by an attempt at breaking the door to his house whereupon his father, Henry Mburu Ndungu tried to stop him from breaking the door. The appellant did not take his father's intervention kindly and reacted by knocking him down, assaulted him and eventually strangled him.

The immediate neighbours who came to assist failed to do so out of fear of being attacked by the appellant who was at the material time in a violent mood.

After the attack the appellant abandoned his father on the ground and went to sleep. Soon thereafter the appellant was woken up from his sleep by neighbours who found his father at the place he had abandoned him. They took him to the hospital but he was unfortunately certified dead on arrival and the doctor stated that he had died of *"cardiopulmonary arrest secondary to strangulation"*.

He has come to us by way of a first appeal listing the following grounds:-

"(1) That I pleaded guilty to the charge.

(2) That my (sic) Lordship the imposed sentence of 9 years imprisonment is (sic) yet harsh and excessive for the murder occurred in (sic) absence of any intention of the same that is under the influence of alcohol.

(3) That my (sic) lordship the imposed sentence of 9 years imprisonment is harsh and cannot serve the purpose of deterrence neither retribution or prevention of the murder remains

accidental.

(4) That my (sic) lordship the imposed sentence of 9 years imprisonment is (sic) yet harsh and excessive considering my age for the sentence (sic) with 25 years."

In his brief address the appellant, who appeared in person, pleaded for mercy and saying that he was remorseful and asked for a less severe sentence. He pointed out to the court that he was now 26 years of age and regrets that at the material time he was drunk and had fallen in bad company and that he now bears the pain of having killed his own father.

Mr. Kaigai learned Senior Principal State Counsel submitted that the sentence of nine years was well merited, and, in his view, the superior court had taken into account all relevant circumstances before meting out the sentence. He added that although the appellant was drunk when he committed the offence the attack itself was extremely vicious and in fact ended up in the appellant strangling his own father.

We have considered the appellant's plea for a less severe sentence and have also noted that he says he has since reformed. We have carefully considered the appellant's plea and Mr. Kaigai's submissions as outlined above, but what has emerged is that even with those submissions in perspective, we think the sentence of nine years in the circumstances was if anything quite lenient, taking into account the range of sentences for the offence of manslaughter which so far have been meted out. We have also taken into account the holding in the case of ***REPUBLIC V JAGANI & ANOR [2001] KLR 590*** to the effect that this Court can interfere with a sentence passed by a Judge in exercise of his discretion only where such sentence is against legal principles or when relevant factors were not considered or irrelevant or extraneous matters considered or normally where the sentence is manifestly excessive in the circumstances of the case.

The grounds raised in this appeal do not fall under any of those exceptions to warrant interference by the Court. Accordingly, this appeal is dismissed.

Dated and delivered at Nyeri this 21st day of May, 2010.

S.E.O. BOSIRE
.....
JUDGE OF APPEAL

E.M. GITHINJI
.....
JUDGE OF APPEAL

J.G. NYAMU
.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR