



IN THE COURT OF APPEAL OF KENYA
AT NYERI

CRIMINAL APPEAL 247 OF 2008

BETWEEN

1. DAVID MBURIA MAINA
2. JOHN GATUHI MAINA**APPELLANTS**

AND

REPUBLIC**RESPONDENT**

*(Appeal from a conviction and sentence of the High Court of Kenya at Nyeri (Makhandia, J.) dated
22nd October, 2008*

in

H.C.Cr.C. No. 27 of 2008)

JUDGMENT OF THE COURT

David Mburia Maina and **John Gatuhi Maina**, the appellants, were initially arraigned in the superior court in Nyeri on the offence of murder contrary to **section 203** as read with **section 204** of the Penal Code. The particulars of the information were that on the night of 9th day of May, 2008 at Kirima in Kirinyaga District of Central Province jointly with others not before court they murdered **Julius Karemi Muriuki**. When they appeared in court on 5th June, 2008 for plea they denied the charge and a plea of “*not guilty*” was entered for them. The case was fixed for hearing on 1st July, 2008 but could not be heard because Mr. Mahan, learned counsel for the appellants had not been supplied with witness statements as ordered by the court on 5th June, 2008. However, on 25th September, 2008 and after the State Counsel, **Mr. Ngalyuka**, made his opening remarks, **Mr. Mahan** applied for an adjournment in order to consider if the appellants could offer a plea of guilty to the offence of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code which was granted.

On 22nd October, 2008 Mr. Mahan informed the court that he had consulted the appellants who were willing to offer a plea of guilty to the lesser charge of manslaughter. The substituted information of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code was then read over to the appellants and they offered a plea of

“guilty” to it which was recorded by the superior court (*Makhandia, J*). The facts in support of the charge were narrated to the appellants by the State Counsel as follows:-

“On 9/5/08 at about 8 p.m. one lady by the name Catherine Wangare Mwaniki who was in her shop in Kirima village was attacked by a person she described as short wearing a green shirt. The person confronted her and beat her in an attempt to steal from her. She raised an alarm and the 2 accused persons were first to respond. The accused are brothers and were neighbours to the said Catherine and the deceased. They suspected the deceased as the one who had attacked Catherine and went to his home. They got him out of his house and assaulted him. They were armed with pangas and rungas at that time. They left with him and the people who responded to the scream had increased. The father to the deceased followed the group. About 300 metres from his home he found the body of the deceased burning. There was nobody at the scene. The body was retrieved by the police and the accused were arrested (sic) subsequently charged. On 21/5/08 a postmortem was carried out on the body of the deceased at Kerugoya District Hospital by Dr. Nderitu. He formed the opinion that the cause of death was severe deep burns covering 100% of the body surface. This is a copy of the postmortem and I wish to produce it if the accused don’t (sic) object.”

There was no objection to its production by counsel for the appellant and the same was produced as an exhibit in the case. When asked if the facts as narrated by the State Counsel were correct, the appellants agreed that they were correct. Thereupon the learned Judge convicted the appellants on their own plea of guilty. Counsel for the appellants then gave mitigating circumstances on behalf of the appellants after which the learned Judge considered their mitigation and the period they had spent in custody. He then stated:

“However through their reckless acts an innocent life was lost. Cases of mob justice or injustice are on the increase which needs to be halted. Accordingly I do not think that a non-custodial sentence is appropriate in the circumstances of this case. I would sentence each of the accused to a term of seven (7) years imprisonment.”

The appellants have appealed to this Court in their home-made memoranda of appeal which pleaded among others that the sentence of seven years was harsh and excessive considering the circumstances of the case and in particular that this was a case of mob justice and that the appellants are Kenyans of good conduct.

When the appeal came up for hearing before us on 10th May, 2010, the appellants repeated the same pleas. The 1st appellant stated that he had no intention to kill the deceased, he is a young man aged 33 years old and had never been involved in criminal activities. The 2nd appellant said that he is sorry for what happened, that he did not intend to kill the deceased, and that he was young and unmarried. As stated earlier, these appeals are against the sentence only.

Section 205 of the Penal Code provides as follows:

“Any person who commits the felony of manslaughter is liable to imprisonment for life.”

The appellants were handed seven years imprisonment each. We have considered all the circumstances of this case, the painful death suffered by the deceased and the inevitable loss suffered by the family and we are of the view that the sentence of seven years for each appellant was reasonable and well merited. We see no reason to interfere with

it. Consequently we dismiss this appeal.

Dated and delivered at Nyeri this 14th day of May, 2010

R. S. C. OMOLO

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JUDGE OF APPEAL

P. N. WAKI

.....
JUDGE OF APPEAL

D.K.S. AGANYANYA

.....
JUDGE OF APPEAL

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

DEPUTY REGISTRAR