



**IN THE COURT OF APPEAL OF KENYA
AT NYERI**

CRIMINAL APPEAL 253 OF 2008

BETWEEN

PETERSON MURIUKI NJINEAPPELLANT

AND

REPUBLICRESPONDENT

*(An appeal from a conviction and sentence of the High Court of Kenya at
Nyeri (Kasango, J.) dated 26th September, 2008*

in

H.C.CR.CASE NO. 28 OF 2008)

JUDGMENT OF THE COURT

Peterson Muriuki Njine, the appellant, pleaded 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 more serious offence of murder contrary to **section 203** as read with **section 204** of the Penal Code, respectively. Thereafter, he was sentenced to 10 years imprisonment by Kasango, J. He comes to us on first appeal challenging the sentence.

Upon the appellant's conviction, his advocate, one Mr. Mwangi, made submissions in mitigation of sentence. He stated that the appellant was remorseful, was a father of three children, he also took care of his five siblings, and that the death of the deceased, who was his good friend, had greatly affected his life.

The circumstances of the offence as narrated by the prosecutor were that the appellant and *Jamlic Njiru Ndambiri*, the deceased, were drinking traditional beer. They were good friends. They must have then parted company, and the appellant went home. There, he picked up a quarrel with his wife, accusing her of having an affair with the deceased. He then assaulted his wife, picked a knife, and headed straight to the house of the deceased, accused the latter of having an affair with his wife, and in the process of an altercation that followed, stabbed him with the knife. The appellant then ran away, leaving the deceased bleeding. Later the deceased was rushed to the hospital, but pronounced dead upon arrival.

Upon his arrest, the appellant was examined by a psychiatrist and found to be of sound mind.

The trial Judge in her notes on sentence noted that she had taken into account the facts which were presented to her in mitigation of sentence. The learned Judge then proceeded to sentence the appellant to 10 years imprisonment.

In the appeal before us the appellant now unrepresented has, in effect, reiterated the submissions his advocate made before the trial

court, and pleaded once again that his sentence be reduced. Mr. Kaigai, learned Principal State Counsel, was of the view that the sentence was fair, that the trial court had taken into account all relevant factors, and that we should not interfere with the same.

Sentencing is a matter for the discretion of the trial court. An appellate court will only interfere if the sentence is illegal or manifestly excessive, or where there is an error in principle. In the matter before us, the trial Judge considered the facts given in mitigation of sentence, the nature and circumstances of the offence and the fact that a life had been lost. We are not satisfied that she committed any error in principle. The sentence she gave is a lawful sentence and in our view, it is proportional to the gravity of the offence and circumstances under which it was committed. We are of the view that the appellant's appeal lacks merit. Accordingly, it is dismissed.

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

E.O. O'KUBASU

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JUDGE OF APPEAL

P.N. WAKI

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JUDGE OF APPEAL

ALNASHIR VISRAM

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR