



IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL 1 OF 2010

BETWEEN

NAFTALY WACHIRA NJOKA APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Nyeri (Makhandia, J.) dated 29th December, 2009

in

H.C.CR.C. NO. 23 OF 2009)

JUDGMENT OF THE COURT

The appellant, **NAFTALY WACHIRA NJOKA** was charged with murder contrary to **section 203** as read with **section 204** of the Penal Code but after plea agreement negotiation pursuant to **section 137F** of the Criminal Procedure Code, he was convicted on a lesser offence of manslaughter contrary to **section 202(1)** as read with **section 205** of the Penal Code. Upon that conviction, the appellant was sentenced to 10 years imprisonment.

The factual basis of the plea agreement was as follows:-

On 3rd March, 2008 at about 9:00 p.m the appellant came home from a drinking spree and began shouting threats to those in the homestead. The deceased, **CHARLES WANJOHI NJOKA**, who was a brother to the appellant returned home and he, too, was drunk. The deceased asked the appellant to stop shouting and maintain peace in the homestead. The appellant ignored the plea to maintain peace but instead went to his house, armed himself with arrows and came out. Using the said arrows he stabbed the deceased on the stomach and left thigh. Family members raised alarm and the appellant ran to this house where he locked himself. Members of the public and the local chief forced open the door and the appellant was removed out of his house. People started beating him but was rescued by the chief. The deceased was rushed to Karatina Hospital where he was admitted. Six days later, the deceased passed away whilst undergoing treatment. On 19th March, 2008, a postmortem examination was conducted on the body of the deceased by Dr. Asungu who formed the opinion that the cause of death was internal haemorrhage due to stab wound on the abdomen.

The appellant was arrested and presented before Dr. Owino, a consultant psychiatrist, for mental evaluation. Dr. Owino examined the appellant and formed the opinion that the appellant was fit to stand trial. As a result, a charge of murder was preferred against the appellant which charge was reduced to manslaughter by virtue of the plea agreement which plea agreement was tendered in court.

The appellant was treated as a first offender and in mitigation, Mr. Kariuki the appellant's counsel stated:-

“I agree with prosecution case. The accused is a first offender. The accused is aged 30 years. He is relatively young. He is married to a house wife with 2 children aged 4 and 2 years respectively. They need him for maintenance and school. Incarceration has rendered them destitute. The deceased was his brother. He regrets this sad event. He has been in custody since 7th April, 2009. He prays for leniency and non-custodial sentence.”

The learned judge (Makhandia, J.) considered the foregoing mitigating circumstances and proceeded to sentence the appellant by stating:-

“I have considered the period during which the accused has been in custody. He was arrested on 7th April, 2009. I have considered the age of the accused who tells me that he is aged about 30 years. He is therefore relatively a young man. I have also considered the circumstances of the offence and the fact the deceased and accused are siblings. However incidents of violence leading to loss of innocent lives are on the increase in this jurisdiction. There is therefore need to curb the same by imposing stiff non-custodial (sic) sentences which sent out a clear and unmistakable message that courts will no longer countenance those kinds of behaviour. Considering the age of the accused, the sentence that best commends (sic) to me is 10 years imprisonment. It is so ordered. Right of Appeal within 14 days on sentence.”

Pursuant to the foregoing, the appellant exercised his right of appeal and in his “*Grounds of Appeal*” stated:-

“That I pleaded guilty to the charge.

That I am remorseful and repentant and if my prayer is heard, will never drink anything intoxicating in my life.

That the act (crime) was as a result of domestic misunderstanding and not planned or premeditated.

That my children and those of the deceased who was my brother stand to suffer with me being young and unable to get support from other quarters.

That I pray for a non-custodial sentence to be near my family.

REASONS WHEREFORE: I pray for the success of this appeal in totality.”

This is the appeal that came up for hearing before us on 26th October, 2010 when the appellant appeared in person, while Mr. Kariuki the appellant's counsel appeared for the State.

In his brief address, the appellant asked us to look into the issue of sentence and referred us to his written submissions. In the end the appellant stated that he wanted the Court to reduce the sentence imposed by the superior court.

On his part, Mr. Kaigai urged us to dismiss the appeal on the grounds that the sentence was well merited; the learned judge took into account all the circumstances of the case; and that the sentence of 10 years cannot be considered as harsh

and/or excessive.

We have carefully considered what has been presented to us in this appeal and from what the appellant told us orally and what is in his written submissions, it is clear that the appeal before us is against the sentence only. We have given the background to this appeal which demonstrates that this is a case in which the appellant came back home drunk and became rowdy. His equally drunk brother (*the deceased herein*) came back home and tried to calm down the appellant. This plea for peace by the deceased appears to have triggered the incident that led to the death of the deceased.

The appellant armed himself with arrows and stabbed the deceased for no apparent reason.

Taking into account all the circumstances of the case and the fact that the maximum sentence for such offence is life imprisonment, we are satisfied that the sentence of **ten (10) years** imprisonment cannot be described as harsh and/or excessive. The learned judge cannot be faulted in any way in the manner he dealt with the appellant's case. We therefore find no merit in this appeal. It must fail. It is accordingly dismissed in its entirety.

Dated and delivered at NYERI this 29th day of October, 2010.

E.O. O'KUBASU

.....
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