



**IN THE COURT OF APPEAL OF KENYA**

**AT ELDORET**

**CRIMINAL APPEAL 80 OF 2009**

**ISAAC PKITE ANDIEMO .....APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

*(Appeal from a conviction and sentence of the High of Kenya at Kitale*

*(Ombija, J.) dated 31<sup>st</sup> March, 2009*

**in**

**H.C.Cr.C. No. 20 of 2008)**

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**JUDGMENT OF THE COURT**

The appellant herein, **Isaac Pkite Andiemu**, was convicted on his own plea of guilty of the offence of manslaughter contrary to **section 202** as read with **section 205** of the same Code in the superior court at Kitale. The particulars of the charge were that on 11<sup>th</sup> day of June, 2008 at Keringet Location in West Pokot District within Rift Valley Province he unlawfully killed **Veronicah Lodwar**; the deceased. The record indicates that the initial charge was that of murder contrary to **section 203** as read with **section 204** of the Penal Code. When this charge was read over to the appellant by the trial Judge (*Ombija, J.*) on 9<sup>th</sup> July 2008 he denied the same and a plea of “**Not guilty**” was entered. The case was then fixed for mention on 16<sup>th</sup> October, 2008 when it was then fixed for hearing on 18<sup>th</sup> March, 2009. On that date the case did not proceed but **Mr. Barongo**, learned counsel for the appellant applied for an adjournment and a mention date to attempt plea bargaining. A mention date was fixed for 31<sup>st</sup> March, 2009 and on that date counsel for the appellant informed the court that his client was willing to plead to a lesser charge of manslaughter. **Mr. Mutuku**, Senior Principal State Counsel accepted the proposal and the manslaughter charge contrary to **section 202** as read with **section 205** was substituted in place of the murder charge contrary to **section 203** as read with **section 204** of the Penal Code. And when the new charge was read to the appellant he answered:

**“It is true.”**

And the Judge recorded:

**“Plea of guilty to charge of Manslaughter entered for the accused.”**

Then the Senior Principal State Counsel stated the facts of the case and how the quarrel between the appellant and deceased arose over the deceased’s heifer which the appellant who was then drunk, was driving away purporting that it was his share since the deceased had not provided for him when she distributed livestock to other siblings. But when the deceased demanded that the appellant return the heifer he produced a kitchen knife and stabbed her in the stomach. She bled profusely and was pronounced dead on arrival at Kapenguria District Hospital where she was taken for treatment.

The appellant admitted those facts and was treated as a first offender. In mitigation his counsel stated that the appellant was intoxicated and that was why he acted in that manner. The learned Judge took into consideration those factors and sentenced the appellant to 7 years imprisonment.

The appellant was aggrieved by this sentence and lodged an appeal to this Court on 8<sup>th</sup> April 2009 in a memorandum of appeal which had six grounds of appeal, thus:-

1. ***THAT Your Lordship despite the fact that I pleaded guilty to the charge the Honourable Justice considered less the circumstances under which the offence was committed and the mitigation submitted by defence counsel.***
2. ***THAT Your Lordship the deceased was my grandmother and along way back we have mutual relationship.***
3. ***THAT Your Lordship both parents and the deceased parents passed away a long time and during the duration I have been the custodian of my children who are in the hands of friends hence without parental care.***
4. ***THAT my Lordship I have lived a loyal and trustworthy citizen prior to this charge, since I have never been thrown behind bars or arrested for any crime, hence I no (sic) Criminal records from C.I. or fellow Kenyans especially the law enforcement agencies.***
5. ***THAT The learned trial Judge erred in law by not considering a more preferable sentence e.g. community service order as a way of correcting the vice. Since I find this sentence harsh in the circumstances.***

The appeal was heard by this Court on 22<sup>nd</sup> September, 2009 when the appellant handed to us what he described as written submissions and had nothing more to add. However, **Mr. Chirchir**, learned Senior State Counsel opposed the appeal and submitted that a sentence of 7 years was not harsh.

The appellant's written submissions were in Kiswahili language which we understand very well. It was to the effect that the Court did not consider his mitigation seriously in passing sentence and that he acted in the manner he did because of intoxication and promised to take no beer anymore if he was released by this Court or is awarded a non-custodial sentence.

What the appellant is asking us to do is to reduce the sentence imposed on him on the ground that it was harsh, and that he committed the offence under the influence of alcohol. When the learned Judge passed the sentence he stated:

***“Having taken into due consideration the circumstances under which the offence was committed and all relevant mitigating facts I sentence the accused to serve 7 years imprisonment”.***

We believe what the learned Judge was saying was that he had taken into account that it was the appellant who had attempted to drive away a heifer belonging to the deceased believing he was entitled to it though he did not seek her permission to do so, that it was him who produced a pen knife and stabbed her on the stomach when she asked him to return it and that he was a first offender as per his counsel's submissions in mitigation. 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, (see ***Republic V. Jagani & Another [2001] KLR 590***). None of these factors are shown to have existed in this appeal to enable us to interfere with the sentence imposed by the learned Judge. The circumstances of the case were aggravating and we feel the sentence was justified. Consequently, this appeal has no merit and we order it dismissed.

***Dated and delivered at ELDORET this 25<sup>th</sup> day of September, 2009.***

**E. O. O'KUBASU**

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**JUDGE OF APPEAL**

**E. M. GITHINJI**

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**JUDGE OF APPEAL**

**D. K. S. AGANYANYA**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**