



IN THE COURT OF APPEAL OF KENYA

AT ELDORET

CRIMINAL APPEAL 81 OF 2009

PETER LOROTI EKAIAPPELLANT

AND

REPUBLICRESPONDENT

(Appeal from a judgment of the High Court of Kenya at Kitale (Ombija, J)

dated 30th March, 2009 in H.C.Cr.C. No. 6 of 2009)

JUDGMENT OF THE COURT

Peter Loroti Ekai, the appellant herein was convicted on his own plea of guilty in the superior court at Kitale of the offence of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code. The particulars of the offence were that on the 1st day of February, 2009 at Milimani Village of Kapkoi Sub-Location Kapomboi Location in Trans Nzoia District within Rift Valley Province he unlawfully killed **Samuel Ekai Nakale**, 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 plea was taken on 17th March 2009, the appellant pleaded not guilty to that charge and a plea of “*not guilty*” was entered. However when the appellant next appeared in court on 30th March, 2009 for mention, Mr. Mutuku, Senior Principal State Counsel appearing for the State informed the court (*Ombija, J*) that the defence had offered a plea of guilty to a lesser charge of manslaughter which the State had accepted and he sought leave of the court to substitute the charge of murder as per the information dated 11th February, 2009 for that of manslaughter as per the information dated 30th March 2009. The information dated 11th February 2009 is not on the record. The court allowed the leave sought and the charge of murder contrary to **section 203** as read with **section 204** of the Penal Code was substituted with that of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code and when this fresh charge was read over to the appellant he is recorded to have pleaded:

“It is true”.

The Senior Principal State Counsel then narrated the facts of the charge to the court and the appellant is recorded to have stated:-

“The facts are true.”

Thereafter the court made the following order:-

“Plea of guilty to manslaughter entered for the accused”

The Senior Principal State Counsel then asked the court to treat the appellant as a first offender and *Mr. Kibe* learned counsel for the appellant was asked to make a statement in mitigation which he did. After the mitigating factors had been stated the Judge sentenced the appellant as follows:-

“Having considered all the mitigating instances of this case I sentence the accused to seven (7) years imprisonment. Right of appeal within 14 days.”

The appellant was not satisfied with this sentence and has appealed to this Court in his homemade grounds of appeal as hereunder:-

1. ***THAT my Lordship, I pleaded guilty at the trial.***
2. ***THAT my Lordship I pray the esteemed court to consider my sentence because it is too harsh against me.***
3. ***THAT my Lordship I have the family to take care of and being in prison for a long time my family plus the family of my late brother will suffer a lot.***
4. ***THAT my Lordship, I pray that the Honourable Court will consider my appeal and give me merit (sic).***
5. ***THAT my Lordship, I pray that my appeal be allowed and sentence to be reduced.”***

During the hearing of the appeal before this Court on 22nd September, 2009 the appellant addressed us and stressed about his family responsibilities which have suffered as a result of his incarceration in prison. He stated that the deceased was his brother and that he did not intend what he did. He prayed for leniency by way of reducing the sentence imposed to that of a shorter one and most probably - community service. *Mr. Chirchir*, Senior State Counsel opposed the appeal and stated that although the deceased was the aggressor the appellant was also armed and that the trial court considered seven (7) years imprisonment sufficient.

The purpose of a sentence is usually to disapprove or denounce an unlawful conduct as a deterrent to deter the offender from committing an offence, to separate offenders from society if necessary to assist in rehabilitation of the offender, and in retribution by providing for reparation for harm done to victims in particular and to society in general. It is also seen as promoting a sense of responsibility in offenders. This Court is being called upon to interfere with the sentence imposed on the appellant by the superior court passed in exercise of its discretion given to it by law. But a Court of Appeal will only interfere with the discretion of a trial court on sentencing where the sentence was imposed 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 view of the circumstances of the case; (see ***REPUBLIC V. JAGANI & ANOTHER***) [2001] KLR 590. The above factors are not shown to exist in this appeal to enable us to interfere with the sentence imposed by the learned Judge. We feel this appeal has no merit and we order it to be dismissed.

Dated and delivered at ELDORET this 25th 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