



IN THE COURT OF APPEAL OF KENYA

AT ELDORET

CRIMINAL APPEAL 79 OF 2009

SILAS MZEE BULUMA APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from conviction and sentence of the High Court of Kenya at Kitale (Ombija J) dated 29th January, 2009

in

H.C.CR.C. NO. 53 OF 2004)

JUDGMENT OF THE COURT

The appellant **Silas Mzee Buluma** was initially charged with murder. However, the charge of murder was subsequently substituted with one of manslaughter. In an information filed by the Attorney General on 13th November, 2004 it had been alleged that at Kiungani Trading Centre in Trans Nzoia District within the Rift Valley Province, the appellant unlawfully killed **Stanley Shunguli Isayi** contrary to **Section 202** as read with **Section 205** of the Penal Code. On 29th January, 2009 the appellant pleaded guilty to the lesser charge of manslaughter.

The background facts which the appellant accepted as true when taking the plea, are that the deceased Stanley Shunguli Isayi was based at Kiungani Trading Centre at 7.30 p.m. where he used to sell paraffin. On the 12th November, 2004, the deceased's brother had given him an assignment to transport a sofa set but the deceased had failed to carry out the assignment and the following day 13th November, 2004 when the deceased's brother demanded an explanation, the two brothers exchanged bitter words and a fight ensued. The appellant who was a watchman guarding a shop nearby heard the commotion and rushed to the scene and decided to separate the two brothers by whipping them. The appellant's intervention resulted in deceased's brother taking off but the deceased turned against the appellant where upon the appellant produced a knife and stabbed the deceased in the stomach on the lower abdomen. The deceased died on the way to Kitale District Hospital where he was being taken by his brother. A postmortem of the body was performed on 17th November, 2004 and the doctor's opinion was that the deceased had died due to internal bleeding, hemorrhage and shock following an injury to the deceased's intestines caused by a sharp object.

On his own plea of guilty to the lesser offence of manslaughter, the appellant was convicted and sentenced to six years imprisonment by Ombija J. and it is against the said sentence that the appellant has filed an appeal in this Court. During the hearing on 25th September, 2009 at Eldoret, the appellant prosecuted his appeal in person, and the State was represented by **Andrew J. Omutelema**, Senior Principal State Counsel.

The appellant relied on the following grounds of appeal:

- “1. The pundit (sic) judge sentenced the appellant without giving due consideration to the long period spent in custody and my mitigation.**
- 2. That in the circumstances of the case the sentence passed upon (sic) I the appellant was harsh.**
- 3. That I am (sic) dependant of a family who stand to suffer irreparably unless the sentence meted upon (sic) I the appellant is reduced.**
- 4. That I am indeed remorseful and pray for leniency.**
- 5. That I am a first offender”.**

During the hearing, the appellant submitted that he had served 4 years in remand and that this period had not been taken into account by the superior court when sentencing him, and in the circumstances, the sentence of six years should be reduced to four years since he had acted in self defence although the incident was unfortunate.

In a brief reply, the learned Senior Principal State Counsel, Mr. Omutelema, opposed the appeal on the ground that it was clear from the record that the superior court had taken into account the period of four years when the appellant was in custody, otherwise, the sentence would have been 10 years imprisonment. He further submitted, before sentencing the appellant, the court did take into account the appellant’s mitigation as is evident from the record. He finally asked the Court to note that since the deceased was not armed, the appellant’s use of a knife resulted in excessive use of force in the circumstances and therefore, the sentence of six (6) years was just.

After evaluating the above facts, the rival submissions as set out above, and also taking into consideration that the appellant was a volunteer who got involved by attempting to separate the two brothers, we think that in the circumstances, he used excessive force in that the deceased was not armed and the appellant who had both a whip and a knife, chose to use a knife instead of the whip thereby killing the deceased.

In the result, we agree with the submissions of the learned Senior Principal State Counsel that the sentence of six years for an unlawful killing cannot by any standard be said to be a harsh or excessive sentence and we accordingly uphold the sentence. The appeal is dismissed and it is so ordered.

Dated and delivered at Eldoret this 23rd day of October, 2009.

R. S. C. OMOLO

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JUDGE OF APPEAL

E. O. O’KUBASU

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JUDGE OF APPEAL

J. G. NYAMU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR