



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAKURU
Criminal Appeal 30 of 2007

DAVID GACHAU GICHIAAPPELLANT

AND

REPUBLICRESPONDENT

(Appeal from a sentence of the High Court of Kenya at Nakuru (Kimaru, J.) dated 18th July 2006

in

H.C.CR.C. NO. 11 OF 2006)

JUDGMENT OF THE COURT

The appellant **David Gachau Gichia** was convicted by the superior court (Kimaru, J.) on his own plea of guilty to the offence of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code. He had originally been charged with the offence of murder contrary to **section 203** as read with **section 204** of the Penal Code but he offered to plead to the lesser offence of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code, shortly before the hearing of the case commenced which prosecution accepted. The particulars of the charge of manslaughter were that the appellant, on the 20th day of December 2005 at Tayari Estate, Molo Township in Nakuru District, within Rift Valley Province, unlawfully killed **Fanuel Ophuka Mbumile**. The appellant further unequivocally accepted the facts as put forward by the prosecution as follows:-

“On the 20/12/05 at around 7.00 p.m. the deceased was sent by his father to buy some items from the shop. He left for the shops as directed. After 10 minutes his father had (sic) an alarm which had been raised in the neighbourhood. He decided to investigate. He met Martin Sufuna. He told him that his son had been stabbed. He was directed to the place where he found his on (sic) lying on the ground. He spoke with the deceased. The deceased told him he had been stabbed in the abdomen by the accused. The accused was nowhere to be seen. The decease (sic) was ferried to the hospital. They took him to Molo sub-district hospital. They were adviced to take the deceased to Nakuru Provincial General Hospital where he was admitted until he died on 23/12/05. His body was kept in the mortuary until the 29/2/2005(sic). Post mortem was performed by Dr. Lutomia - He was of the opinion that the cause of death was cardiopulmonary arrest due to hyporemia shock. After stabbing the deceased the accused went underground in the nearby Molo forest until early morning of 21/12/2005 when he boarded a

matatu which took him to Naivasha. He stayed in Naivasha until the 8/1/2006 when he was arrested when he told Eliud Chege that he had quarreled with someone at Molo and stabbed him. After the police were informed by Eliud, they put the accused in custody until he was transferred to Molo Police station. He was taken to hospital on 31/1/2006 where he was examined by Dr. Ogendi who found him to be of sound mind and mentally fit to stand trial. The accused wrote a statement and said he was drunk at the time of the incident. It is not clear what caused the quarrel between the accused and the deceased. P3 form and post mortem form produced as prosecution exhibits 1 & 2. After the conclusion of investigations, the accused was charged with murder which has now been reduced to manslaughter.”

Upon his conviction, the appellant was sentenced to serve 10 years imprisonment. He now comes before us on this first and last appeal on sentence only, which he asserts was harsh and excessive.

In his submissions before us, the appellant pleaded for leniency blaming his actions on his youth at the time the offence was committed, and drunkenness. He was now a reformed person after spending time in prison and was remorseful, he pleaded:-

The appellant was represented by counsel at his trial in the superior court and the same mitigating factors were placed before the learned trial Judge. The learned Judge considered those factors and stated:-

“The accused stabbed the deceased after a quarrel. It is not clear who was the aggressor. What is however clear is that the deceased was unarmed at the time. There is no evidence that the accused and the deceased fought. It cannot therefore be said that the accused stabbed the deceased in self defence. For all intents and purposes, the fatal stabbing of the deceased by the accused was unprovoked and unwarranted. Although it is claimed that the accused was drunk, it does not excuse him from culpability accuseds (sic) action, a human life was needlessly lost. For that reason the accused shall serve a custodial sentence.”

We have considered the plea made before us by the appellant but we find no valid reason to interfere with the sentence imposed. The maximum punishment for the offence is life imprisonment and there were aggravating circumstances in this case to warrant a stiff custodial sentence. A lethal weapon was used to end the life of an innocent human being and the Court must not only consider the consequences of that act on the appellant but also on the victim and his immediate family. There is nothing in the appellant’s plea of youthfulness and drunkenness to persuade us that the appellant was deserving of lenient treatment. We agree with the reasoning of the superior court in meting out the sentence and we have no intention of interfering with it. The appeal is not meritorious and we order that it be and is hereby dismissed.

Dated and delivered at Nakuru this 2nd day of October, 2009.

S. E. O. BOSIRE

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JUDGE OF APPEAL

P. N. WAKI

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JUDGE OF APPEAL

J. W. ONYANGO OTIENO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR