



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CRIMINAL APPEAL NO. 51 OF 2006**

**LEONARD KYALO MULI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

***(Appeal from a conviction & sentence of the High Court of Kenya***

***Machakos (Wendoh, J) dated 8<sup>th</sup> February, 2005***

**In**

**H.C. Cr. C. No. 60 of 2004)**

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**JUDGMENT OF THE COURT**

The appellant, Leonard Kyalo Muli, who was originally charged with the offence of murder, eventually pleaded guilty to and was convicted of the lesser offence of manslaughter contrary to *section 202* as read with *section 205* of the Penal Code. The particulars of that charge were that on the 13<sup>th</sup> day of July, 2003 at Ikaatini Market, Machakos District of the Eastern Province, the appellant unlawfully killed Pius Mutune Katata, “*The deceased*” hereinafter.

The deceased was the son of one Patrick Matete Mutune (Patrick). On 13<sup>th</sup> July, 2003, Patrick invited the appellant to his home. The deceased lived with his wife in his father’s home. The appellant had been invited there to help Patrick in the preparation of some herbal medicine. At some stage during the visit, the appellant got involved with the wife of the deceased and the two were caught having sexual intercourse in a bush behind the home. A fight started between the appellant and the deceased, but it would appear that the matter was patched up. Later in the day the deceased and his father went to Kwa Wanjiru Market and the appellant and deceased met again. The appellant was said to have removed his shorts and threw them at the deceased. A quarrel again erupted and the appellant chased the deceased into a bar. The appellant was next seen coming out of the bar carrying a blood-stained knife and the deceased was subsequently found dead there with a stab wound on the chest measuring 2x2 inches. The appellant admitted all these facts and the learned Judge (Wendoh, J) having convicted him sentenced him to twenty years imprisonment. The appellant’s appeal to us now is one of mercy on the basis that the sentence of twenty years imposed on him was harsh and excessive in all the circumstances.

We, of course, have the right to interfere with a sentence such as the one before us if we are satisfied that in coming to that sentence, the Judge did not take into account a relevant factor, or that she took into account an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive.

In this case there can be no doubt that throughout the incident or incidents leading to the death of Pius, the appellant was the guilty party. He had been invited to the home of the deceased and he provoked the deceased beyond endurance by sleeping with the wife of the deceased. When he met the deceased at the market, he was already armed with a knife and chased the deceased into a bar where he stabbed him causing instant death. The learned Judge took all these factors into account. She also took into account the respective ages of the deceased and the appellant. The only relevant thing she appears not to have taken into account was that by the time she was sentencing the appellant on 8<sup>th</sup> February, 2005, the appellant had been in custody for nearly two years, the offence having been committed on 13<sup>th</sup> July, 2003. Apart from not taking this relevant factor into account, we think that in all the circumstances of the case, the sentence of twenty years imprisonment was harsh and excessive.

We accordingly allow the appeal against sentence, set aside the sentence of twenty years and substitute therefor a sentence of fifteen (15) years imprisonment to run from 8<sup>th</sup> February, 2005, that being the date when the appellant was convicted and sentenced. To that limited extent, the appeal succeeds.

Dated and delivered at Nairobi this 15<sup>th</sup> day of February, 2008.

**R.S.C. OMOLO**

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**JUDGE OF APPEAL**

**P.N. WAKI**

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**JUDGE OF APPEAL**

**W.S. DEVERELL**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR.**