



IN THE COURT OF APPEAL

AT NAKURU

CRIMINAL APPEAL 184 OF 2006

PETER TOMNO RUTO APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from a Sentence of the High Court of Kenya at Nakuru (Kimaru, J.) dated 5th November, 2004

in

H.C.CR.C. NO. 36 OF 2004)

JUDGMENT OF THE COURT

Peter Tomno Ruto, the appellant, was on 5th November, 2004 convicted by the High Court of Kenya at Nakuru, Kimaru, J. on his own plea of guilty to manslaughter contrary to **section 202** as read with **section 205** of the Penal Code and sentenced to **fifteen (15) years** imprisonment. He appeals to this Court on sentence only on the grounds; first, that he is the sole bread winner for his family, and second; that he is ailing in goal having suffered from ulcers and TB.

On 18th February, 2004 at about 4:00 p.m. the appellant arrived home to find the deceased's goats and sheep grazing on his farm. He drove them off and went on to repair the fence through which the animals had strayed. While doing so, the deceased who was his cousin and who appeared drunk, rudely answered the appellant that there was nothing he could do to her despite what her animals had done. The deceased then moved towards her house but the appellant armed himself with a panga and hastily followed her. He caught up with her inside her house and viciously hacked her on the neck thus killing her instantly. A post mortem conducted on her body gave the cause of death as severe cervical rupture by a sharp object. The appellant was subsequently arrested by members of the public and handed over to the police.

The learned judge in the court below deemed the attack unwarranted upon an unarmed defenceless woman following a minor transgression by straying animals.

It is evident from the facts tendered before the trial court and of which facts were unequivocally admitted by the appellant that there was no reason whatsoever for him to resort to the use of a lethal weapon while he himself was not attacked nor was he in an imminent danger. Moreover, the deceased who was not armed with any object had moved away.

Taking all facts and circumstances into account we would think that the sentence herein is well merited and is neither harsh nor manifestly excessive. Moreover, this Court will not ordinarily interfere in the discretion exercised by a trial judge in the matter of sentence unless it is evident that the judge has acted upon some wrong principle, or overlooked some material factor. In the present case the learned Judge has done neither.

The appeal is dismissed.

Dated and delivered at Nakuru this 3rd day of October, 2008.

P.K. TUNOI

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JUDGE OF APPEAL

S.E.O. BOSIRE

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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