



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT ELDORET

CRIMINAL APPEAL 210 OF 2005

MESHACK CHEROBEN MASAI APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from sentence of the High Court of Kenya at Kitale (Karanja, J) dated 28th June, 2005

In H.C.CR.C. No. 46 of 2004)

JUDGMENT OF THE COURT

The appellant MESHACK CHEROBEN MASAI was convicted by the superior court on his own plea of guilty for the offence of manslaughter contrary to **section 203** as read with **section 205** of the Penal Code and sentenced to seven (7) years imprisonment. He appeals against the sentence on four grounds, that is:-

- “ 1. *That I pleaded guilty to the trials (sic)*
2. *That I plead for mercy*
3. *That I have a family and sole bread winner and the imprisonment will make it worse*
4. *That I am asthmatic the condition in prison will make it worse (sic)*
5.”

According to the facts which were read in the superior court after the appellant pleaded guilty, the deceased DANIEL WAMALWA WEKESA and others were drinking busaa - a local brew, in the house of one SIMON WAMALWA BARASA (Barasa) on the material day at about 8.00 p.m. A dispute arose between the appellant and one MOSES CHERBUS Moss (MOSES). The appellant became annoyed and

hit Moses very hard on the ribs. The two then started fighting. The deceased started separating them and the appellant hit the deceased very hard on the forehead after which the appellant ran towards his house. He was chased by Moses and Barasa but the two went back after the appellant entered into his house.

Later at about 9.00 p.m. the appellant went to the deceased's house and called him out. After the deceased came out, the appellant stabbed him on the chest with a Somali Sword. The appellant ran away. The deceased died instantly. The cause of death was hemorrhagic and cardiogenic shock due to injury to the heart and left lung caused by a sharp object.

Although the appellant pleaded guilty to the offence of manslaughter, he nevertheless has a right of appeal as to the extent and legality of the sentence (see **Section 379 (3)** of the Criminal Procedure Code). However, we can only interfere with the discretion of the trial Judge as to the appropriateness of the sentence if it appears that the learned Judge acted on wrong principles in assessing the sentence or that the Judge has imposed a sentence which is manifestly excessive.

The offence of manslaughter carries a sentence of life imprisonment.

There is no valid ground of appeal against sentence. The appellant is merely asking for clemency in his grounds of appeal. In the circumstances of this case the sentence of seven years imprisonment is not manifestly excessive. In our view, the appellant deserved a heavier sentence than he got.

In the result the appeal has no merit and is accordingly dismissed.

Dated and delivered at Eldoret this 23rd day of February, 2007

S.E.O. BOSIRE

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JUDGE OF APPEAL

E.M. GITHINJI

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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.