



IN THE COURT OF APPEAL OF KENYA
AT NAKURU
Criminal Appeal 53 of 2006

SAMUEL GITHUA NJOROGE.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a judgment of the High Court of Kenya

Nakuru (Kimaru, J) dated 25th January, 2006

In

H.C.CR.C. NO. 97 OF 2003)

JUDGMENT OF THE COURT

The appellant was convicted by the superior court on his own plea of guilty for the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code and sentenced to seven years imprisonment. He appeals against the sentence on three grounds namely:-

1. That, I am thirty five years old and a parent of two children aged between four and six years. I am the only son of my parents and for all the time I used to be with them I was the sole bread winner to my parents and my family too.
2. That from the time I have remained confined I developed stomach ulcers and I have been experiencing a hard time and much suffering due to the condition and environment of being confined.
3. That I have been rehabilitated and I got saved while here and most of time I give testimonies to my fellow inmates and I promise to be somebody helpful in the society incase of being released and I humbly pray that this Hon. Court consider my sufferings as a whole.

On the material day the deceased and a cousin of the appellant were taking traditional liquor in certain premises at about 9.30pm. They were being served by a woman. After the close of business the deceased and the appellant's cousin each wanted to leave with the barmaid. A quarrel ensued between the deceased and appellant's cousin as to who was to leave with the barmaid which quarrel degenerated into a fight. The appellant who was selling meat in a nearby butchery upon being informed of the fight rushed to the scene to help his cousin. He found that the deceased had run away. The appellant nevertheless pursued the deceased and stabbed him with a knife killing him instantly.

The principles upon which an appellate court can interfere with the discretion of a trial judge as regards

sentence are well settled. The appellate court can only interfere where the trial judge in assessing the sentence has acted on wrong principles or has imposed a sentence which is manifestly inadequate or manifestly excessive. (see **Diego v Republic [1995] KLR 621**. In this case the appellant does not say in his grounds of appeal that the sentence is either harsh or manifestly excessive. Indeed, the appellant has not raised any grounds upon which the court can lawfully interfere with the sentence. His grounds of appeal merely amount to plea for clemency.

The appellant was not involved in the fight with the deceased and did not even witness the fight between his cousin and the deceased. The deceased was not armed with any weapon. In the circumstances there was no justification for stabbing the deceased. The appellant stabbed the deceased merely because the deceased was fighting with his cousin. We are satisfied that the sentence meted out was deserved and that there are no grounds for interfering with it.

In the result we dismiss the appeal.

Dated and delivered at Nakuru this 25th day of September 2007.

P. K. TUNOI

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JUDGE OF APPEAL

E. M. GITHINJI

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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