



IN THE COURT OF APPEAL OF KENYA

AT NAKURU

Criminal Appeal 38 of 2006

TERESIA WANJIKUAPPELLANT

AND

REPUBLICRESPONDENT

(Appeal from a sentence of the High Court of Kenya Nakuru (Mr. Justice L. Kimaru) dated 13th May, 2005 In H.C.CR.C. NO. 59 2003)

JUDGMENT OF THE COURT

This is an appeal from the judgment of L. Kimaru J. in which he sentenced the appellant herein *Teresia Wanjiku* to serve ten (10) years imprisonment. She had pleaded guilty to the manslaughter of Esther Mumbi. The learned Judge stated that she deserved a custodial sentence.

The facts were summarized by the learned Judge as follows:-

“I have considered the facts of this case. I have also considered the mitigation of the accused. The accused killed the deceased in a fit of spousal jealousy. She thought that the deceased who was a married woman herself was having an affair with her husband. She waylaid her as she was coming back to her home after serving dinner to her husband. The accused was armed with a panga which is a lethal weapon in the hands of a person who has intent to harm. The accused intended to physically harm the deceased. The subsequent death of the deceased was not therefore unexpected. I do find that the accused intended to seriously harm deceased. For that reason she deserves a custodial sentence. Having noted her mitigation I sentence her to serve ten (10) years imprisonment.”

Before this Court the appellant appeared in person. The grounds for her appeal were stated by her as follows:-

- “1. That I pleaded guilty to the charge.*
- 2. That the sentence of ten (10) years is too harsh and excessive.*
- 3. That I am a mother of 3 children of which they all depend on me for their daily living.*
- 4. That the deceased provoked me for she had alone affair with my husband.*

5. *That I did not intend to kill the deceased.*
6. *The my parents who are currently taking care of my children are peasant farmers who are aged and thus unable to cater for my children wellbeing.*
7. *I pray for leniency.*
8. *I wish to be present during the hearing of my appeal.”*

In ***Diego v. Republic*** [1985] KLR 621 in a judgment of Todd J. and O’Kubasu, J.(as he then was) in the High Court held as follows:-

“5. An appellate Court should not interfere with the discretion by a trial Judge as to sentence except in such cases where it appears that in assessing the sentence which is manifestly inadequate or manifestly excessive. The appellate Court would not interfere with the sentence imposed on the appellant.”

We have come to a similar conclusion and do not consider that we should interfere with the sentence ordered by the learned Judge. We hereby order that the appeal be dismissed.

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