



REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT KISUMU
CRIMINAL APPEAL 167 OF 2006

DENNIS ONYIEGO APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from sentence of the High Court of Kenya at Kisii (Bauni J) dated 13th May, 2004

in

H.C.CR.C. NO. 9 OF 2004)

JUDGMENT OF THE COURT

The appellant herein, *Dennis Onyiego*, was originally charged with the offence of murder contrary to **section 203** as read with **section 204** of the Penal Code (Cap. 63 Laws of Kenya) but when he appeared before the superior court (Bauni J.) on 11th May, 2004 he offered a plea of guilty on a lesser offence of manslaughter, which plea was accepted by the State.

The facts of the case were that on 29th December, 2003 the appellant went to his home drunk at about 7.00 p.m. and found his wife (deceased) absent. The wife, however, appeared soon thereafter and a quarrel ensued between the two. That quarrel led to a fight in which the appellant was overpowered and knocked down. While still on the ground he stretched his hand and managed to get a knife with which he stabbed the deceased. She screamed only once and died instantly. The appellant woke up his brother and neighbours and told them that he had stabbed his wife. The appellant was subsequently arrested and charged with murder and later pleaded guilty to the lesser offence of manslaughter.

Mr. Anyona, the learned counsel for the appellant told the trial court by way of mitigation that his client was drunk at the time he committed the offence, and that there had been a misunderstanding between him and his wife. The court was further informed that the appellant was young and his parents were aged. Mr. Anyona pleaded for a lenient sentence.

The learned Judge considered all that was stated before him and proceeded to sentence the appellant to 8 years imprisonment.

The appellant now comes before us by way of first appeal. He told us that he admitted having committed the offence; and that it was not his wish to commit the offence. He referred us to a document entitled "*Mitigation Grounds*" in which he asks for leniency.

Mr. Musau, the learned Senior Principal State Counsel asked us to dismiss this appeal, as, in his view, the sentence meted out by the superior court was lawful. He went on to submit that considering the circumstances of the case the sentence of 8 years imprisonment was neither harsh nor excessive.

We have considered this appeal and the submission by both the appellant and Mr. Musau. This is a case in which the appellant came home drunk and found his wife absent. When the wife arrived shortly thereafter a quarrel ensued which led to a fight in which the appellant was overpowered and knocked down by his wife. In that unfamiliar situation, the appellant managed to grab a knife with which he stabbed his wife who died instantly.

Taking those circumstances into account, we do not think a sentence of 8 years imprisonment can be considered as either harsh or excessive. It is our view, that the sentence was well merited. We have no reason to interfere with a lawful sentence and hence we order that this appeal be and is hereby dismissed.

Dated and delivered at Kisumu this 1st day of December, 2006.

E. O. O’KUBASU

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JUDGE OF APPEAL

P. N. WAKI

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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