



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT KISUMU

CORAM: O’KUBASU, GITHINJI & WAKI, J.J.A.

CRIMINAL APPEAL 241 OF 2005

BETWEEN

FOSTER ISABWA AMBENGEAPPELLANT

AND

REPUBLICRESPONDENT

(Appeal from sentence of the High Court of Kenya at Kakamega

(Mr. Justice Kariuki) dated 17th June, 2005

in

H.C.CR. NO. 37 OF 2003)

JUDGMENT OF THE COURT

Foster Isabwa Ambenge, the appellant herein was originally charged with murder contrary to **section 203** as read with **section 204** of the Penal Code on information which stated that on the 25th day of July, 2003 at Budaiywa village Budaiywa sub-location, Busali Location in Vihiga District within Western Province, he murdered Simon Ambenge Gavihi. This charge of murder was reduced to a lesser charge of manslaughter to which the appellant pleaded guilty. The facts as narrated to the High Court and admitted by the appellant were that on 25th July, 2005 at about 9.00 p.m. the appellant arrived at his father’s home in Budaiywa village of Budaiywa sub-location and went to the kitchen to demand food. He found his sister Caroline Tsisachi Ambenge and demanded

food from her but she told him that there was no food left in the house. This annoyed the appellant who began quarrelling with his sister. This noise attracted the deceased who was in his bedroom. The deceased demanded to know what the appellant was doing in the kitchen and as a result a quarrel ensued. The appellant picked a piece of timber and hit the deceased severally on various parts of the body. The deceased fell down. Caroline raised alarm and neighbours responded. The appellant ran away while the deceased was rushed to Shamakanga Health Centre where he was admitted in an unconscious state and died the following day. This incident was reported to the police who immediately arrested the appellant.

As the appellant admitted the facts as stated the High Court (Kariuki J) convicted him of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code.

The appellant’s counsel Mr. Manyoni by way of mitigation stated that the appellant who was a young man aged 24 years was remorseful and that he should be given an opportunity to reconstruct his life. It was further submitted that the appellant was a father of a 5 year old boy who was dependent on the appellant. He had been in custody for over a year and so he pleaded for leniency by asking for a non-custodial sentence.

The learned Judge considered the foregoing and in sentencing the appellant to 15 years imprisonment stated:-

“Manslaughter is a serious felony. It carries a sentence of life imprisonment. The accused has asked for leniency on the basis of the mitigation by his counsel. I take into account the fact that he pleaded guilty, is a first offender, and has a young family. I also take into account that he has been in custody for one year and 8 months. The unlawful act that caused the death of the deceased was due to beastly behaviour on the

part of the accused. He showed marked lack of respect for an old man who was also his father. His action in beating his father to death with a piece of timber exemplifies a beastly behaviour. The offence is prevalent and requires a deterrent sentence. I sentence the accused to fifteen (15) years imprisonment.”

It is from the foregoing that the appellant comes to this Court by way of appeal.

His appeal is against sentence only. He has told us that he was aged 24 years and that the prison sentence was too long.

Section 205 of the Penal Code provides that any person who commits the felony of manslaughter is liable to imprisonment for life.

The appellant was convicted, on his own plea of guilty, of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code. He was therefore liable to be sentenced to life imprisonment. He was however, sentenced to serve 15 years in prison.

The learned Judge considered all the circumstances of the case in arriving at the sentence imposed on the appellant. We have, on our part, considered the circumstances under which the offence was committed as well as the mitigating circumstances put forward by the appellant’s counsel and it is our view that the sentence imposed was neither harsh nor excessive in those circumstances. We find no merit in this appeal and we accordingly order that the same be and is hereby dismissed.

Dated and delivered at Kisumu this 25th day of November, 2005.

E. O. O’KUBASU

.....
JUDGE OF APPEAL

E. M. GITHINJI

.....
JUDGE OF APPEAL

P. N. WAKI

.....
JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR