



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI
(CORAM: KWACH, SHAH & OWUOR, J.J.A)
CRIMINAL APPEAL NO. 74 OF 1997

BETWEEN

EPHANTUS MUGO KING'ATHIAAPPELLANT

AND

REPUBLICRESPONDENT

**(Appeal from conviction and sentence of the High Court of
Kenya at Nyeri (Lady Justice Ang'awa) dated 28th
November, 1995
in
H.C.Cr. Case No. 32 of 1994)

JUDGMENT OF THE COURT

Ephantus Mugo King'athia, the appellant, was charged with murder contrary to section 203 read together with section 204 of the Penal Code. It was alleged that on 23.11.92 at Itundu Village in Nyeri District of the Central Province he murdered George Wachira Njagi.

The record is very disjointed but as far as we can make out, the appellant, the deceased and two other persons were drinking at a local bar. At some stage the appellant objected to the presence of the deceased and he ordered him to leave the table where they were sitting. As the deceased left, the appellant followed him outside. The evidence is not clear but it appears that the two got into a fight in the course of which the appellant violently kicked the deceased. The deceased collapsed and was taken to a nearby dispensary where he was treated and discharged to go home. Later on his condition deteriorated and he was returned to the hospital where he died on 25.1.92. Post mortem examination revealed that the deceased's spleen and kidneys were ruptured. At the end of the trial the learned Judge convicted the appellant of manslaughter on the ground that the intention to kill had not been established as the offence was committed when the appellant was drunk. The learned Judge sentenced the appellant to life imprisonment.

The appellant has appealed to this Court against both conviction and sentence but at the commencement of the appeal Mr. Karingithi informed us that the appellant wished to withdraw the appeal against conviction. We are satisfied on the evidence that the deceased died from injuries inflicted upon him by the appellant. Although the appellant suggested at his trial that the deceased might have sustained the injuries as a result of a fall on a hard surface there was clearly no substance in that suggestion and it was rightly rejected. The learned Judge sentenced the appellant to life imprisonment but the trial court has the

power and discretion depending on the circumstances, to impose a shorter sentence. There were mitigating circumstances in this case to which the learned Judge does not appear to have attached sufficient weight in assessing sentence. Both the appellant and the deceased were drunk and no dangerous weapon was involved. In these circumstances a life sentence was not justified and was clearly harsh and excessive.

The appellant was arrested on 24.11.1992 and has been in custody ever since. He has been incarcerated for over 10 years. We think he has been sufficiently punished for his crime and paid his debt to society. Accordingly, we allow his appeal against sentence and reduce it to the time he has already served. We order that the appellant be released forthwith unless he is otherwise lawfully held.

Dated and delivered at Nyeri this 6th day of May, 2003.

R.O KWACH

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL

E. OWUOR

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR