



**IN THE COURT OF APPEAL  
AT NAIROBI  
CORAM: OMOLO, TUNOI & O'KUBASU, JJ.A  
CRIMINAL APPEAL NO.105 OF 2002**

**BETWEEN**

**CHARLES KARIUKI MUKIRIA .....APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

**(Appeal from a sentence of the High Court of Kenya at  
Nairobi (Oguk J) dated 20th December, 2001**

**in**

**H.C.CR. C. NO.103 OF 2001)**

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**JUDGMENT OF THE COURT**

The appellant **Charles Kariuki Mukiria**, was convicted on his own plea of guilty on a charge of manslaughter contrary to **section 202** as read with **section 205** of the Penal Code (Cap.63 Laws of Kenya) and sentenced to ten years imprisonment by the High Court (Oguk J).

The appellant was with other police officers on patrol duties along Upper Hill road at about 4.30 a.m. when they met a group of about fifteen young men. The appellant and his colleagues identified themselves as police officers and challenged them to stop. The young men were not ready to identify themselves. The appellant who was armed with a revolver shot at the young men in a bid to scare them but unfortunately the deceased was hit by the bullet and fell down. Four of the young men were arrested while the rest made good their escape. The deceased died as a result of the bullet wound and the appellant together with his two colleagues were arrested and jointly charged with murder. The appellant was, however, offered to plead guilty to a lesser charge of manslaughter which offer was accepted by the State.

The learned Judge of the superior court considered the facts as narrated by the prosecutor and what was said in mitigation by the appellant's Counsel and in the end came to the conclusion that appropriate sentence was ten years imprisonment. In sentencing the appellant the learned Judge said:-

*"The 1st accused did not there fore act in a prudent manner as would be expected of an officer of his experience or by the police standing orders as is known to the court. He was no doubt reckless in the use of his weapon and he aimed at the deceased and sure enough caught him with his bullet.*

*I can see nothing much that can be said in favour of the 1st accused except that he is a first offender and has offered profound apology to the family of the deceased through this court.*

*I sentence the 1st accused to serve ten (10) years in pris on".*

In his submission before us Mr. Njanja for the appellant contended that as the appellant shot the deceased in self defence the sentence of ten (10) years imprisonment was excessive.

In sentencing the appellant the learned Judge was exercising his discretion. He had to and did take into account all the circumstances of the case. In the present appeal the appellant acted recklessly, as stated by the learned Judge. **Section 205** of the Penal Code provides that any person who commits the felony of manslaughter is liable to imprisonment for life. The sentence of ten years imprisonment is therefore a lawful sentence. We have not been persuaded that in view of the circumstances of this case the sentence imposed was manifestly excessive. In our view the learned Judge took all the relevant facts into account and arrived at a sentence which was appropriate.

For the foregoing reasons we find no merit in this appeal and we order that the same be and is hereby dismissed.

**Delivered at Nairobi this 8th day of November, 2002.**

**R.S.C. OMOLO**

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**JUDGE OF APPEAL**

**P.K. TUNOI**

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**JUDGE OF APPEAL**

**E.O. O'KUBASU**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**