



**REPUBLIC OF KENYA**  
**IN THE COURT OF APPEAL**  
**AT KISUMU**  
**CORAM: CHUNGA, CJ, LAKHA & OWUOR, J.J.A.**  
**CRIMINAL APPEAL NO. 152 OF 2000**  
**BETWEEN**

**ALEX ABUGA OMACHE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**(Appeal from the conviction & sentence of the High Court  
of Kenya at Kisii (Waweru J) dated 8th February,  
2000  
in  
H.C.CR.C. NO. 3 OF 2000)  
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**JUDGMENT OF THE COURT**

In this case the appellant, **ALEX ABUGA OMACHE**, was convicted of manslaughter contrary to Section 202 as read with **Section 205 of the Penal Code** by the superior court at Kisii (Waweru, J.) on 8 February 2000. He was sentenced to seven years' imprisonment. He appeals to this Court against sentence only.

The appellant and the deceased were brothers. They owned parcels of land that bordered each other. A dispute arose between them over a portion of land at their common boundary. They quarrelled and in the process started fighting. The appellant cut the deceased with a panga. The deceased received multiple cuts on the abdomen and the chest. He died on the way to hospital.

The appellant had pleaded guilty to the charge that on 3 August 1999 at Charachani sub-location in Nyamira District of Nyanza Province he unlawfully killed one **ZACHARIAH MATUNDA**.

We have carefully considered all the circumstances of this case. This was yet another needless killing of one brother by another. It is all the more pitiable because they were the only two sons in the family. But this Court will not condone the needless killings of human beings by people who should learn to control their tempers. The learned trial Judge passed this sentence of seven years' imprisonment as he was entitled to do and we cannot say that he acted upon any wrong principle in so doing. It may be that had this Court been trying the appellant, it might have passed a less severe sentence but that by itself is not a ground for interference and this Court will not normally interfere with the discretion exercised by a trial Judge in the matter of sentence unless it is evident that the Judge had acted upon some wrong principle or overlooked some material factor. In the present case the learned Judge has done neither. Nor is the sentence illegal, unlawful or excessive. Upon an appeal alleging undue severity of sentence, a Court of Appeal cannot properly interfere with the discretion of the trial Judge unless having regard to all the facts

the sentence imposed is so severe (which in the present case it is not) as to amount to a miscarriage of justice.

The appeal is dismissed.

Dated and delivered at Kisumu this 22nd day of March, 2001.

**B. CHUNGA**

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**CHIEF JUSTICE**

**A. A. LAKHA**

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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