



REPUBLIC OF KENYA

IN THE COURT OF APPEAL
AT KISUMU

CORAM: CHUNGA, CJ, LAKHA & OWUOR, J.J.A.
CRIMINAL APPEAL NO. 184 OF 2000

BETWEEN

ANTONY WANDERA MAJANGA APPELLANT

AND

REPUBLIC RESPONDENT

**(Appeal from the conviction & sentence of the High Court
of Kenya at Busia (Mbitio J) dated 5th May, 2000**

in

H.C.CR.C. NO. 17 OF 1998)

JUDGMENT OF THE COURT

The appellant, **ANTONY WANDERA MAJANGA** , is dissatisfied with a sentence of seven years imprisonment meted out to him by the superior court (Mbitio J) sitting at Busia, following a conviction after his own plea of guilty, on a charge of manslaughter contrary to **Section 202 as read with Section 205 of the Penal Code** .

In the petition of appeal he filed by himself he has listed four grounds of appeal upon which he desires that this Court should find it fit to interfere with the said sentence. The four grounds of appeal basically amount to one complaint in that taking into consideration the particular circumstances of his case, the seven years imprisonment sentence was manifestly excessive. The particular circumstances that he refers to are that the deceased whom he killed was his only brother. The deceased had a big family, together with his own and there is nobody left to look after them. He being the only bread-winner.

Secondly, that he was involved in a road accident and suffered serious injuries to his head and spinal cord as a result he is in a poor state of health. Finally that he is an old man aged about 68 years and therefore a prolonged imprisonment sentence does not serve any purpose nor is it justifiable.

Circumstances of this case which were put to the judge were that one Pascal Ragoi, was in his home in the afternoon of 17th day of May, 1998. The appellant and his three sons went to Pascal's home and began uprooting a boundary fence that Pascal had planted. Pascal went to them and asked them to stop uprooting the fence. Instead of stopping, the appellant and his sons attacked Pascal inflicting serious injuries which he later died from on 29th day of May, 1998 while undergoing treatment at Busia District

Hospital. Post mortem carried out on the body revealed that the deceased had died of a head injury.

In exercising his discretion, the learned judge took into consideration the fact that the deceased was the appellant's brother and the deceased's death arose out of a family feud arising from a land dispute. The judge was not insensitive to the fact that the appellant took the law into his own hands and thereby killed his brother in the whole process. Even though the appellant was remorseful, his brother's life had been lost. It was on this basis that the learned trial Judge arrived at the sentence of seven years', as he was indeed entitled to do.

The law is clear as to the circumstances upon which this Court will interfere with the sentence of a trial court. The manner in which Trevelyn J, (as he then was) put it in the case of **WANJEMA V REPUBLIC [HCCA 204 OF 1970]** reported in [1971] EA page 493, meets our approval:

"A sentence must in the end depend on facts of its own particular case ... An appellate Court should not interfere with the discretion which a trial court has exercised as to the sentence unless it is evident that it overlooked some material factor, took into account some immaterial factor, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the case."

On our own assessment of the circumstances of this case, we are satisfied that the learned judge did neither of the above, he exercised his discretion judicially and awarded the right sentence. We see no ground upon which to interfere with the sentence. This appeal against sentence is dismissed.

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

B. CHUNGA

CHIEF JUSTICE

A. A. LAKHA

JUDGE OF APPEAL

E. OWUOR

JUDGE OF APPEAL

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

DEPUTY REGISTRAR