



REPUBLIC OF KENYA

IN THE COURT OF APPEAL OF KENYA

AT NYERI

CRIM APP 134 OF 00

JACKSON NGURU MIRUGI.....APPELLANT

AND

REPUBLIC.....RESPONDE NT

JUDGMENT OF THE COURT

The appellant, Jackson Nguru Mirugi, was charged with the offence of Manslaughter, contrary to Section 202 of the Penal Code as read with Section 205 thereof. He was convicted, on the 28th day of June, 1999, of the said offence by C.P. Mwangi Esq., Senior Principal Magistrate and sentenced to 8 1/2 (eight and a half) years in jail. He appealed against that sentence and we use the word 'sentence' guardedly as there is nothing in his grounds of appeal lodged in the superior court to suggest that he was appealing against the conviction. The said grounds of appeal are as follows:-

- "1.That the trial magistrate while passing his judgment did not consider the circumstances of the case as a family matter not deeply tested.
- 2.That the sentence is harsh and excessive considering my relationship with the family as the eldest son from a peasant family while the younger brothers are in school looking forward for my aid because my mother is in her old age now.
- 3.Your Lordship, I kindly request you to consider there was no grudge as far as the case is concerned. I look up for a favourable conclusion to enable me to join hands in nation building whilst I am still young."

The superior court (J.V.O. Juma, J) rejected the appellant's appeal summarily pursuant to provision in section 352 (2) of the Criminal Procedure Code. It is against that summary rejection that the appellant has brought this appeal. The appellant argued his appeal personally and reiterated his grounds of appeal before us which are:

- "1.That the High Court erred in law in concurring (sic) the trial court's findings without the consideration of my grounds of appeal.
- 2.That the trial and High Court erred in law by failing to consider the long period of imprisonment term imposed on me (8 1/2) years yet I am a first offender.
- 3.That the lower court erred in law by failing to accord me a chance of mitigation which legal rights I was denied.

4.(Not relevant)" Section 352(2) of the Criminal Procedure Code limits the power of summary rejection to cases where the appeal is brought on the ground that the convictions were against the weight of the evidence, or that the sentence was excessive. Therefore, the learned Judge had the power of summary rejection, the appellant's appeal to the High Court, being wholly against sentence. The appellant himself categorically informed this Court that he was not appealing against conviction and that his quarrel was in regard to the severity of sentence, that is to say, that the eight and a half year sentence imposed on him was hWaer sdho. not see any misdirection on the part of the learned Judge in summarily rejecting the appeal. This appeal is therefore dismissed.

Dated and delivered at Nyeri this 17th day of May, 2001.

B. CHUNGA

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CHIEF JUSTICE

A.B. SHAH

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JUDGE OF APPEAL

S.E.O. BOSIRE

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR