



REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NYERI
(CORAM: CHUNGA, C.J., SHAH & OWUOR, J.J.A.)
CRIMINAL APPEAL NO. 77 OF 1999
BETWEEN

WILSON MAINA MURAGE APPELLANT
AND
REPUBLIC RESPONDENT

JUDGMENT OF THE COURT

The appellant herein was, on 12 January, 1999, convicted by the Senior Resident Magistrate at Karatina of Manslaughter Contrary to **Section 205** of the Penal Code and sentenced to seven years imprisonment.

Against the conviction and sentence, the appellant filed a first appeal in the High Court Nyeri on 21st January, 1999. He prepared, in person, 10 grounds in support of the appeal. The appellant's appeal and the lower court record came before the High Court Judge at Nyeri, Juma, J. who, having perused the record, did, on 21st September, dismiss the appeal summarily under section 352 of the Criminal Procedure Code CAP. 75 Laws of Kenya.

The Judge certified as follows:

"I certify that I have perused the record and I am satisfied that the appeal has been lodged without any sufficient ground for complaint. Appeal summarily rejected under section 352(2) Criminal Procedure Code."

Against the summary rejection of the appeal by the High Court, Mr. Wahome Gikonyo, has, on 29th March this year, filed an appeal in this Court. He raised three grounds in support thereof. In brief, the three grounds, in their totality, attack the summary rejection of the appeal by the High Court. In his submission before us on 15th May, 2000, Mr. Wahome Gikonyo confined himself to the three grounds he had raised and the summary rejection of the appeal by the High Court. He submitted that the summary rejection was wrong because, the grounds of appeal filed by the appellant in the High Court raised several grounds other than that the conviction was against weight of evidence, or severity of sentence. Accordingly, he argued that the High Court Judge should have admitted the appeal, and should have set it down for hearing to give the parties the fullest opportunity to canvass the grounds in the appellant's petition of appeal. Therefore, Mr. Gikonyo urged us, to allow this appeal, set aside the summary dismissal of the appeal in the High Court, and refer the same to the High Court for full hearing.

Section 352(2) of the Criminal Procedure Code CAP. 75 Laws of Kenya, under which the Judge acted is in the following terms:- "Where an appeal is brought on the ground that the conviction is against the weight of the evidence, or that the sentence is excessive, and it appears to a judge that the evidence is sufficient to support the conviction and that there is no material in the circumstances of the case which could raise a reasonable doubt whether the conviction was right or lead him to the opinion that the sentence ought to be reduced, the appeal may, without being set down for hearing, be summarily rejected by an order of the Judge certifying that he has perused the record and is

satisfied that the appeal has been lodged without any sufficient ground for complaint."

As we mentioned earlier, the appellant himself prepared and lodged in the High Court 10 grounds in support of his appeal. Mr. Gikonyo, in his submission, referred us particularly to **grounds 1, 2, 3, 4, 5, 6, 7, 9 and 10** all of which, he submitted, disclosed points of law and were not solely against the weight of evidence or against severity of sentence.

Mr. Oluoch, the Provincial State Counsel, agreed with Mr. Gikonyo. He referred us particularly to **grounds 1 and 2** of the appellants grounds of appeal in the High Court which, like Mr. Gikonyo, he submitted disclosed points of law. He too, asked us to remit the appellants appeal to the High Court for full hearing.

We have already quoted in full the provisions of section 352(2) of the Criminal Procedure Code. Any Judge seized of the record under this section must give full consideration, not only to that record, but also, to the grounds put forward in support of the appeal. This task is greatest where, as here, the appellant is unrepresented and prepares his grounds of appeal in person. It is necessary to scrutinise the grounds put forward by the appellant in order to see, whether, they disclose a discernable point of law worth putting forward for a full hearing upon admission of the appeal.

In order to deal with the issues raised before us, we think it is appropriate, to quote, in this judgment, at least grounds 1 and 2 of the appellant's petition to the High Court. This is what he stated in the two grounds:-

"1. That the learned trial magistrate erred in law and fact in failing to consider that the whole case against me was based on circumstantial evidence which inference were dubiously weak to warrant a conviction.

2. That the trial court erred in law and fact in admitting and acting upon the retracted statement which itself was exculpatory nor did its content incriminate me with the offence, since I had elaborate (sic) how the deceased stepped down from the bed but missed her target then hit her head against the wall which caused her death."

We are particularly concerned about the complaints disclosed by the appellant's first ground of appeal. He complained that the circumstantial evidence tendered by the prosecution against him was not enough to support the conviction.

In the second ground, the appellant complains of the admission and reliance upon his retracted statement by the learned trial magistrate though, here, we observe that, when that statement was put in evidence during the course of the hearing, the appellant's advocate had no objection to it.

Where a case is based on circumstantial evidence, the need for proper evaluation and direction by the Court upon such evidence, is a legal issue. This is what the appellant complained of in his first ground of appeal and we are satisfied, that on this alone, the appeal ought not to have been summarily rejected.

As both counsel asked us to remit the appeal to the High Court, we do not find it necessary to go into the merits of the appeal by considering whether the circumstantial evidence was enough to support the conviction or otherwise, or whether, the learned trial magistrate directed himself on that evidence.

In our judgment, there were points of law raised in the appellant's grounds of appeal and we are satisfied that this was not a proper case for summary dismissal of the appeal under **section 352(2)** of the Criminal Procedure Code.

For the preceding reasons and upon careful consideration of the record and the submissions of both counsel before us, we allow the appeal, set aside the order of summary rejection of the appeal by the High Court, and remit the appeal to the High Court for full hearing.

We make no further orders in view of the conclusion we have reached above except to say that the appeal should be set down for hearing by the High Court as soon as is practically possible.

Dated and delivered at Nyeri this 17th day of May, 2000.

B. CHUNGA

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CHIEF JUSTICE

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