

REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT MOMBASA
(CORAM: GICHERU, LAKHA & OWUOR, J.J.A.
CRIMINAL APPEAL NO. 81 OF 2000

BETWEEN
THAMAA KARISA NDEGWAAPPELLANT
AND
REPUBLICRESPONDENT

JUDGMENT OF THE COURT

The appellant was sentenced to 11 years imprisonment on a plea of guilty to Manslaughter contrary to section 205 of the Penal Code on 15th October 1999. He had been in custody for 4 years prior to this sentence. He considers this sentence to be excessive and now appeals to this Court on that account only. He had on 8th September 1995 at about 10:30 p.m. gone to the deceased's home who was his aunt and sought assistance from her and her husband as according to him, his wife was seriously sick at his home. On the way to his home he struck the deceased on the head with a stick which resulted in her death.

This was without any provocation but according to the appellant, he did so as the deceased had bewitched his family and wanted to get rid of her. In sentencing the appellant to 11 years imprisonment the learned trial judge observed that the killing of the deceased was almost deliberate and that the case before him called for a stiffer sentence. We do not disagree with the learned judge in this regard. But considering that the appellant had been in custody for a period of 4 years, we think that a sentence of 11 years imprisonment in the circumstances of the case before him was excessive.

Taking into account the period the appellant had been in custody, a sentence of 7 years imprisonment would have been appropriate. Accordingly, we allow the appellant's appeal against the sentence of 11 years imprisonment and reduce the same to one of 7 years imprisonment.

Dated and delivered at Mombasa this 25th day of July, 2000.

J.E. GICHERU

.....

JUDGE OF APPEAL

A.A. LAKHA

.....

JUDGE OF APPEAL

E. OWUOR

.....

JUDGE OF APPEAL

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

