

**IN THE COURT OF APPEAL
AT NAIROBI
CORAM: OMOLO, SHAH & O'KUBASU, J.J.A
CRIMINAL APPEAL NO. 44 OF 2000
BETWEEN**

**ROSE NDUNGE MUTUKU.....APPELLANT
AND
REPUBLIC.....RESPONDENT**

(Appeal from a conviction, Judgment, decree and order of the High Court of Kenya at Nairobi

(Hon. Justice

V.V. Patel) dated 31st August, 1999

in

H.C.CR.C. NO. 62 OF 1999

JUDGMENT OF THE COURT

The appellant, suspecting infidelity on the part of her husband, took the initiative to go to the place where her husband was suspected to be with the other woman (deceased).

A fight ensued between the two women after the appellant confronted the deceased. The deceased attacked the appellant with a knife. The appellant managed to get hold of the knife and stabbed the deceased. The wound was fatal. The deceased had a longitudinal stab wound measuring 5 cms. in length. Such a wound suggests that the appellant must have used excessive force. In the circumstances we do not think that a custodial sentence of two years and nine months was so excessive as to merit interference by us. The sentence is neither harsh nor excessive. This appeal is dismissed.

Dated and delivered at Nairobi this 27th day of September, 2000.

R.S.C. OMOLO

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JUDGE OF APPEAL

A.B. SHAH

.....

JUDGE OF APPEAL

E. O'KUBASU

.....

JUDGE OF APPEAL

I certify that this is

a true copy of the original.

DEPUTY REGISTRAR.