



**REPUBLIC OF KENYA**

**IN THE COURT OF APPEAL**

**AT KISUMU**

**CORAM: GICHERU, AKIWUMI & KEIWUA, J.J.A.**

**CRIMINAL APPEAL NO. 100 OF 2000**

**BETWEEN**

**JEREMIAH MOGIRE MBEICHE .....APPELLANT**

**AND**

**REPUBLIC .....RESPONDENT**

**(Appeal from a Sentence of the High Court of Kenya at  
Kisii (Hon. Mr. Justice Waweru) dated 31st August, 1999**

**in**

**H.C.CR. CASE NO. 37 OF 1999)**

**\*\*\*\*\***

**JUDGMENT OF THE COURT:**

In his notes on sentence, the learned trial judge observed that it was easy to understand the appellant's anger on discovering that his wife, now deceased, stole a large sum of money from him. He also observed that that notwithstanding, the appellant had no right to viciously attack the deceased in order to extract a confession from her.

The deceased had taken Kshs.6,000/= from the appellant's coat pocket and had given it to her cousin called John. On questioning by the appellant, she had refused to own up the taking of that money the result of which he assaulted her with a piece of firewood on the head inflicting serious head injuries which resulted in her death soon thereafter. It was during that assault that the deceased confessed having taken the money in question and given it to her cousin.

The mitigation proffered on behalf of the appellant by his counsel in the superior court after his plea of guilty and conviction for the offence of manslaughter was similar to what has been urged before us by counsel now appearing for him. This mitigation centres around the welfare of his 14 children now left without anyone to fend for them. However, even taking into account the plight of the said children, it is important to note that this is a Court of law and not of sympathy. The sentence of 7 years imprisonment meted against the appellant was legal and in the circumstances of the facts before the learned trial judge it was not manifestly excessive him having taken into account all the mitigating factors proffered before him on behalf of the appellant. We are unable to fault the learned trial judge in this regard and in the result we can find no merit in the appellant's appeal. The same is therefore dismissed.

**Dated at Kisumu this 22nd day of November, 2000.**

**J. E. GICHERU**

.....

**JUDGE OF APPEAL**

**A. M. AKIWUMI**

.....

**JUDGE OF APPEAL**

**M. KEIWUA**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**