



IN THE COURT OF APPEAL

AT NYERI

(CORAM: WAKI, AGANYANYA & VISRAM, JJ.A.)

CRIMINAL APPEAL NO. 275 OF 2010

BETWEEN

DAVID MWANGI NDIRANGU..... APPELLANT

AND

REPUBLIC..... RESPONDENT

***(An appeal from a conviction and sentence of the High Court of Kenya at Nyeri (Sergon, J.) dated
23rd July, 2010***

in

H.C.CR.CASE NO. 6 OF 2010)

JUDGMENT OF THE COURT

The appellant **David Mwangi Ndirangu** was convicted on his own plea of guilty to the charge of manslaughter contrary to **Section 202** as read with **Section 205** of the Penal Code and sentenced to a term of ten (10) years imprisonment by the High Court (Sergon, J.) on 23rd July, 2010.

The facts that gave rise to his plea of guilty were as follows:

The appellant and the deceased were brothers, the appellant being the elder of the two. They had a long standing land dispute. On that fateful day of 14th January, 2000, the appellant went to the Muranga Law Courts to attend a hearing in respect of a case in which he was the respondent, and his younger brother, the deceased, the complainant. While there, he received a phone call from his wife complaining that she had been driven out of her house by the deceased. The appellant rushed home in anger, picking a panga and a piece of wood. On the way, he met the deceased's daughter, **Pauline Waitera**, and expressed anger at her, asking her why his wife had been evicted. When Pauline kept quiet, he threw the panga at her, missing her narrowly. Pauline ran towards her home, screaming. On hearing Pauline, the deceased came out. The appellant was already there. A confrontation ensued, and the appellant begun to slash the deceased with the panga, hitting him on his head and shoulders. The deceased died almost instantly; members of the public gathered around; the police also arrived, and took the body to the hospital. Dr. Gaturu of the Provincial General Hospital, Nyeri, conducted the post mortem on the body and concluded that the deceased died of multiple head injuries.

The appellant was charged with the offence of murder contrary to **sections 203** and **204** of the Penal Code. He subsequently pleaded guilty to the offence of manslaughter, and as we have stated before, was sentenced to 10 years in prison. In meting out that sentence, the learned Judge considered what was said in mitigation by counsel on behalf of the appellant, that he had two wives and three children who depended on him, and that he was remorseful. His learned counsel, Mr. Gathiga Mwangi, simply asked us to reduce the sentence of 10 years imprisonment which he said was harsh. He relied on the case of **AYUB MEINE PETER V. R (NYERI C.A. 16 OF 2006.-**

Section 379(3) of the Criminal Procedure Code States:-

“No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by the High Court, except as to the extent or legality of his sentence.”

Clearly, sentence which was imposed on the appellant is lawful. The learned Judge had the jurisdiction and the power to impose a life sentence, as provided for in **section 205** of the Penal Code. However, he imposed a sentence of 10 years imprisonment. The sentence is lawful and it cannot be said that the learned Judge erred in principle when he settled for 10 years imprisonment. Although we have the power

to interfere with the “extent” of the sentence, we could only do so where special circumstances are shown to exist or where it is clear that there was an error in principle in arriving at the sentence. None was pointed out, nor do we find any to justify interfering with the sentence.

Accordingly, and for the reasons stated, we find no merit in this appeal and dismiss the same. It is so ordered.

Dated and delivered at Nyeri this 1st day of December, 2011.

P.W. WAKI

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JUDGE OF APPEAL

D.K.S. AGANYANYA

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JUDGE OF APPEAL

ALNASHIR VISRAM

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR



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