IN THE COURT OF APPEAL

AT NAKURU

(Coram: Platt, Gachuhi & Apaloo, JJA)

CRIMINAL APPEAL NO 173 OF 1988

RONO.....APPELLANT

VERSUS

REPUBLIC.....DFENDANT

JUDGMENT

February 23, 1989, Platt, Gachuhi & Apaloo, JJA, delivered the following judgment.

The appellant pleaded guilty to manslaughter before Nakuru principal Magistrate and convicted on his plea. He accepted as correct the facts which were related to court by the prosecution. In his mitigation before the sentence was passed he said:

“On December 8, 1985 at 1 pm I was in the house when I was attacked. I have 5 children some of them are small. Two are in secondary school. I defended myself. I do not know why I was attacked because we lived in separate homes.”

He was then sentenced to a term of 4 years imprisonment. The deceased was accused’s nephew who was hacked to death in the appellant’s house which was locked from inside. People outside pleaded with the appellant not to kill the deceased but he continued hacking him. The deceased had also pleaded with the appellant not to kill him but the appellant did not heed to his plea.

Mr Ochieng-Odhiambo filed an appeal in the High Court on four grounds that: against the appellant was not proved to the standard required in criminal cases, that the plea was an unequivocal, that the principal magistrate failed to consider the defence of self defence by the appellant in his mitigation and that the sentence was excessive. The appeal was summarily rejected under the provisions of section 352(2) of the Criminal Procedure Code though in practice appeals by counsel are normally not summarily rejected, Mr Okumu the provincial state counsel supports the summary rejection because the appellant pleaded guilty to the charge and as such could not appeal against the conviction, because, to do so, it would contrary to the provisions of section 348 of the Criminal Procedure Code. He submitted that the appellant could have only appealed against the sentence which was also contrary to the provisions of section 352(2) of the Code.

We have considered this argument and we have also looked at the grounds of appeal filed by his advocate in the High Court. We are of the view that the plea of defence was raised after the appellant

had already pleaded guilty and convicted. The facts accepted do not amount to self-defence in law. Defending himself was merely on mitigation but the trial magistrate treated the plea appropriately in sentencing him to four years. We find no merit in this appeal which we order to be dismissed. This is the order of the court.

Dated and Delivered at Nakuru this 23rd day of February, 1989

H.G PLATT

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JUDGE OF APPEAL

J.M GACHUHI

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JUDGE OF APPEAL

F.K APALOO

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR