Case Number:	Criminal Appeal 50 of 2015
Date Delivered:	07 Dec 2015
Case Class:	Criminal
Court:	High Court at Malindi
Case Action:	Judgment
Judge:	Said Juma Chitembwe
Citation:	Peter Karani Mudigo v Republic [2015] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Criminal
History Magistrates:	-
County:	Kilifi
Docket Number:	-
History Docket Number:	-
Case Outcome:	-
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CRIMINAL APPEAL NO. 50 OF 2015

(Appeal from the conviction and sentence by Hon. D. Kinaro-SRM in Kilifi Cr. Case No.521 of 2013)

PETER KARANI MUDIGO.....APPELLANT

=VERSUS=

REPUBLIC.....PROSECUTOR

J U D G M E N T

The Appellant was charged with the offence of manslaughter contrary to section 202 as read with Section 205 of the Penal Code. The particulars are that the appellant on 18th November 2013 at around 1740 Hrs at Dzikunze Location, in Ganze District within Kilifi County unlawfully killed Kahindi Masha Kanywenze.

The Appellant was convicted after pleading guilty to the charge and sentenced to serve twenty years imprisonment. The grounds of appeal are that the trial court ought to have imposed a shorter sentence since the deceased was the aggressor, that the appellant was provoked, that the trial court admitted that the appellant is a first offender but it imposed an excessive sentence, that the appellant acted in self defence and that the appellant's mitigation to the effect that he is the sole breadwinner for his three young children was not considered.

Mr. Muranje, counsel for the appellant submitted that the appellant fairly pleaded guilty and this saved judicial time. The facts of the case show that it was the appellant who was attacked. The knife used in the incident belonged to the deceased. A psychiatrist report indicate that if the appellant did not act in self defence then he was going to be killed. The appellant suffered a deep cut on the scalp that could have been fatal.

It is further submitted that the prosecution did not capture the facts properly. The appellant is the brother in law to the deceased. The deceased had even cut the appellant's sister's ear. Section 17 of the Penal Code allows one to act in self defence. Similarly, the appellant was also provoked, insulted and even attacked to the extent of almost being killed. There was no intention to kill. The appellant has also been in custody for a long time and has suffered enough.

Mr. Nyongesa, prosecution counsel, opposed the appeal. Counsel admit that there was no malice aforethought. It was killing at the heat of the moment. The plea was unequivocal. The appellant stabbed the deceased several times. The trial court exercised its discretion properly while handing over the sentence. A life was lost.

The appellant pleaded guilty to the charge. The entire petition of appeal drawn by the firm of Marende

Birir Shimaka & Co. Advocates does not contest the conviction. I have read the record of the trial court and do find that the plea was unequivocal. There is no ground of appeal against the conviction. Section 348 precludes the filing of appeal to contest a conviction where the accused pleaded guilty.

The facts of the case were well captured by the trial court. It is clear from the facts that the deceased was the appellant's brother in law. The appellant informed the deceased that he had neglected his wife (appellant's sister) the deceased got annoyed and drew a knife. He stabbed the appellant on the left hand a struggle ensured. The appellant overpowered the deceased and took the knife. He stabbed the deceased several times. The trial court evaluated the facts and appreciated the fact that the deceased was the aggressor. The trial court observed that the appellant used excessive force.

In the case of **ORWOCHI ARANI V REPUBLIC [1976-80] 1 KLR, 1638**, the appellant was convicted for manslaughter. The deceased attacked the appellant with a panga. The appellant managed to take the panga and stabbed the deceased. He had been sentenced for four years imprisonment. The Court of Appeal reduced the sentence to the fifteen months period already served.

In the case of **WANJEMA V REPUBLIC [1971] EA at 469,** Justice Trevelyan stated the following with regard to sentencing;

"A sentence must in the end, depend upon the facts of its own particular case. In the circumstances with which we are concerned a custodial order was appropriately made. But that which was made cannot possibly be allowed to stand. An appellant court should not interfere with the discretion which a trial court has exercised as to sentence unless it is evident that it overlooked some material factors, took into account some immaterial factor, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the case."

I have seen the psychiatrist report dated 25th November 2013. It does not indicate that the appellant could have been killed had he not acted in self defence. I have equally seen the photographs showing the deceased's body. The photos are extremely pathetic. The deceased suffered severe injuries. The photos show that the deceased was slit from the chest upto the abdomen. The postmortem report indicate that the slip injury was 18cm long. The intestines were exposed. I do acknowledge that this was at the heat of the moment and in self defence but do agree with the findings of the trial court that the appellant used excessive force. Having overpowered the deceased, the appellant could have stabbed the deceased in self defence. However slitting the body is quite cruel and inhuman even in those circumstances.

I do admit that the appellant acted in self defence. There was no intention to kill. The facts shows that members of the public came to the scene. The incident occurred at 3.30 pm and the appellant could have easily been rescued by members of the public after having snatched the knife from the deceased. The sentence is quite excessive since there was no intention to kill and the appellant pleaded guilty.

The appellant escaped from custody and was sentenced to serve two years imprisonment for escaping from lawful custody. The period the appellant was in custody was being used to serve that sentence.

I do set aside the twenty year sentence and replace it with six (6) years imprisonment. The appellant to serve six (6) years imprisonment from the time of conviction.

Dated, signed and delivered at Malindi this **7th** day of **December** 2015.

SAID J. CHITEMBWE

JUDGE