



IN THE COURT OF APPEAL FOR EAST AFRICA

AT NATROBI

(Coram: Madan, Potter JJ A & Simpson Ag JA)

CRIMINAL APPEAL NO. 62 OF 1979

BETWEEN

JOEL NGAHU ANDREW.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal against a sentence by Cockar J in the High Court, Nairobi, on 26th September 1979 in Criminal Case No 40 of 1979.)

JUDGMENT

The appellant and a co-accused were charged with murder. They pleaded “guilty” to manslaughter. No conviction was recorded by the judge. The appellant was sentenced to eleven years’ imprisonment, his co-accused to seven years; the disparity apparently being due to the fact that the judge considered that the appellant was clearly the author, that it was his fight and that he had persuaded his co-accused to join him.

In his statement of the facts State counsel said that both the appellant and his co-accused started fighting the deceased and, in the course of the fight, the deceased was stabbed. The advocates representing the appellant and his co-accused then made pleas in mitigation, in which each blamed the other. We think, with respect, that the judge erred in making a distinction between the two accused persons before him on the basis of these conflicting statements. There was, we think, insufficient material before him to impose disparate sentences.

Having regard to the facts and the pleas in mitigation, particularly the period of eleven and a half months in custody, we think that the sentence was manifestly excessive and we reduce the sentence of eleven years’ imprisonment to one of five years’ imprisonment. No doubt on hearing of this the appellant’s co-accused, who has not appealed, will take such action as he thinks fit.

Appeal against sentence allowed.

Dated and delivered at Nairobi this 18th December 1980.

C.B MADAN

.....

JUDGE OF APPEAL

K.D POTTER

.....

JUDGE OF APPEAL

SIMPSON

.....

AG. JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR