

MATTERS OF JUSTICE | Appellate bench says High Court was fair in sentencing accused

Manslaughter convict loses bid to walk free despite plea-bargain

Jailed man said sentence was harsh and excessive since he was drunk when he committed the offence

BY ANDREW HALONYERE AND CORNELIUS W. LUPAO

".....upon the court convicting and sentencing the appellant pursuant to a plea agreement, section 137L of the Criminal Procedure Code prohibits any appeal except as to the extent or legality of the sentence imposed. An appeal against conviction is thus incompetent."

DAVID IRUNGU MURIITHI V REPUBLIC [2010] EKLK (WWW.KENYALAW.ORG) COURT OF APPEAL AT NYERI TUNOI, GITHINJI & ONYANGO OTIENO, J.J.A NOVEMBER 4, 2010

An appeal against a conviction arising from a bargained plea is incompetent, the Court of Appeal has held.

The ruling was delivered by the court in an appeal where David Irungu Muriithi sought to quash a 10-year sentence for manslaughter following a bargained plea in the superior court.

The appellant had been charged with murder contrary to section 203 as read with section 204 of the Penal Code (Cap 63). During the trial, the appellant had raised a preliminary objection to the charge contending that he was entitled to an acquittal as he was brought to court more than 14 days after his arrest in breach of section 72(3) (b) of the repealed Constitution.

The preliminary objection was however dismissed by the High Court. The appellant subsequently entered a plea agreement pursuant to section 137A (1) of the Criminal Procedure Code, whereby the state agreed to reduce the charge to manslaughter to which he pleaded guilty.

The High Court accepted the plea pursuant to section 137H



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The Nyeri Law Courts where Appellate judges recently ruled that failure by lower courts to indicate that the language used during a trial was not reason enough to overturn a conviction.

of the Criminal Procedure Code and entered the factual basis of the plea on record and proceeded to convict Muriithi in compliance with section 137 L (1) of the Criminal Procedure Code.

The court went further and invited the parties to address it on the issue of sentencing and upon considering the respective submissions, jailed the appellant for 10 years.

Aggrieved with the sentence, the appellant brought an appeal against it contending against its severity. He submitted that his mitigation that he was a father of two and sole breadwinner was not considered when passing the sentence.

He also said the High Court erred in law in convicting and sentencing him without considering that his rights under section 72 (3) (b) of the Constitution (repealed) had been violated; that the court failed to consider that he had pleaded guilty and saved it time and, lastly, that the sen-

tence was harsh and excessive considering that he was drunk when he allegedly committed the offence.

The state counsel opposed the appeal by submitting that the sentence was well merited, urging that the High Court considered all factors, that is, life was lost over a minor dispute and that the sentence was very lenient.

10 years

The term Irungu Muriithi is serving in prison for manslaughter

Dismissing the appeal, the court held that the appellant's ground relating to the breach of his constitutional right under section 72 (3) (b) of the repealed Constitution had no merit because he had raised it as a preliminary objection to the charge to which the High



Court had held that the constitutional rights of the appellant had not been violated hence dismissed it.

Further, the judges observe that upon the court convicting and sentencing the appellant pursuant to a plea agreement section 137L of the Criminal Procedure Code prohibited an appeal except as to the extent or legality of the sentence imposed and an appeal against conviction was therefore incompetent.

The Court of Appeal observed that the High Court strictly and cautiously complied with the procedure relating to plea bargaining contained in section 137A - 137H of the Criminal Procedure Code including taking into account the stipulated factors before passing the sentence and dismissed the appeal.