**Lentiyo v Republic**

**Division:** Court of Appeal of Kenya at Nakuru

**Date of judgment:** 3 March 2006

**Case Number:** 181/05

**Before:** Tunoi, O’kubasu and Deverell JJA

**Sourced by:** LawAfrica

**Summarised by:** H Kibet

*[1] Criminal law – Murder – Defences – Provocation – Self-defence – Manslaughter –Factors to be*

*considered in determining whether self-defence had been established – Honest belief based on*

*reasonable grounds that killing was necessary – Reasonable apprehension of serious violence – Whether*

*force used by appellant was excessive – Whether manslaughter established – Section 17 – Penal Code.*

**Editor’s Summary**

The appellant was charged with murder contrary to section 203 as read with section 204 of the Penal Code. Having initially indicated his willingness to plead guilty to a lesser charge of manslaughter, the appellant denied the charge when it was read out and explained to him. The trial judge then recorded that the charge reverted to murder. At the trial, evidence was adduced to the effect that on the material day the appellant, who was an Assistant Chief, met the deceased and his brother as he made his way to address a public function. The appellant was at the time lawfully armed with a rifle and sword. For reasons that were not apparent, the deceased pounced on the appellant who in turn hit him on the head, splitting his skull and resulting in his death. The trial judge considered the evidence, found that the appellant applied excessive force and accordingly convicted him on a lesser charge of manslaughter. In view of the fact that he had been in custody for five years, she considered that this was sufficient punishment and discharged him under section 35(1) of the Penal Code on condition that he did not commit any offence for a period of one year. The appellant now appealed against the conviction and sentence on the grounds that the trial judge had erred in law by failing to uphold his defences of provocation and self-defence and in failing to appreciate that the ingredients for conviction on manslaughter were not established. Counsel for the respondent submitted, *inter alia*, that the appellant had used excessive force and that the conviction ought to be upheld **Held** – The law to be applied in relation to self-defence was the common law of England. Where a person against whom a forcible and violent felony was being attempted repelled it by force and in so doing killed the attacker, the killing was justifiable, provided that there was a reasonable necessity for the killing or an honest belief based on reasonable grounds that it was necessary and the violence attempted by or reasonably apprehended from the attacker was really serious. In other cases, where no violent felony was attempted, a person was entitled to use reasonable force against an assault. If he was reasonably in apprehension of serious injury, he could use such force, including deadly force, as was reasonable in the circumstances provided that he did all that he was able in the circumstances by retreat or otherwise, to break off the fight or avoid the assault. In either case, if the force used was excessive, but the other elements of self-defence were present, there could be a conviction of manslaughter: *Manzi Mengi v Republic* and *Selemani v Republic* applied. If the accused found himself in evident danger from his opponent, he was obliged to retreat from the danger but if he found that he could not retreat further, he could use force to defend himself; *Musyoka and others v Republic* considered. In this instance, the trial judge had properly directed herself on all the issues and it was thus safe to confirm the conviction. The sentence imposed was also in no way illegal. Appeal dismissed.

**Cases referred to in judgment**

(“**A**” means adopted; “**AL**” means allowed; “**AP**” means applied; “**APP**” means approved; “**C**” means

considered; “**D**” means distinguished; “**DA**” means disapproved; “**DT**” means doubted; “**E**” means

explained; “**F**” means followed; “**O**” means overruled)

***East Africa***

*Manzi Mengi v Republic* [1964] EA 289 – **AP**

*Musyoka and others v Republic* [2003] 1 EA – **C**

*Selemani v Republic* (number 1) [1963] EA 446 – **AP**