



**Gathogo v Republic (Criminal Appeal E036 of 2022)
[2024] KEHC 16365 (KLR) (20 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16365 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL APPEAL E036 OF 2022
DO CHEPKWONY, J
DECEMBER 20, 2024**

BETWEEN

NICHOLAS NGANGA GATHOGO APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The Appellant Nicholas Nganga Gathogo Was charged, tried, convicted and sentenced to serve ten (10) years imprisonment for the offence of Attempted Murder contrary to Section 220(a) of the Penal Code in Gatundu Magistrate’s Criminal Case No.e80 of 2021. Aggrieved with the conviction and sentence, the Appellant lodged the present appeal in which this court in a judgment delivered on 28th June, 2024 affirmed the conviction by the subordinate court.
2. The remaining issue for determination was the sentence which was meted against the Appellant. The Appellant was sentenced to serve ten(10) years imprisonment which he finds excessive and harsh. In passing the said sentence, it is worth-noting that the trial court considered the Appellant’s mitigation, the fact that he was remorseful, the riders impact report, the recommendations by the probation officer and the need to balance the law and the fact that the offence was committed by a spouse.
3. This court then directed that a social inquiry be conducted by the probation officer and a sentence review report be filed in the matter wherein the same was filed on 18th November, 2024.
4. The court has read through the sentence review report which outlines the current home circumstances of the accused, prison rehabilitation, offender’s attitude and impact of imprisonment when coming up with the recommendations.



5. In its recommendations, the probation officer has stated that the accused is 39 years old father of two young children and is very remorseful of what he did hence begs the court for a second chance. It is also been indicated therein that the accused has been of best conduct and is ready to start all over and be a role model to his young children.
6. Further, the probation officer has indicated that the Appellant has shown remorse, significant progress and a strong commitment, to making a positive impact or contribution to the community for which he should be granted a second chance for his personal redemption. She has therefore recommended a three (3) years probation sentence.
7. For the offence of attempted murder, Section 220 (b) of the Penal Code provides for a sentence of life imprisonment. However, in consideration of the nature of the offence and the recommendations by the probation officer based on his commitment to amend his ways and contribute to his family and society in a constructive and meaningful way.
8. The court proceeds to adopt the recommendations by the probation officer and places the appellant on probation for a period of three (3) years on condition that:-
 - a. The Appellant obeys the supervising probation officer and complies with any condition that may be set by the probation and after care services department.
 - b. The Appellant to remain of good conduct.
 - c. The Appellant must not commit any offence during the probation period.
 - d. The Appellant must attend guidance and counselling session to be organised by the probation department.
 - e. Failure to comply with any of the above conditions, will result to the Appellants arrest and he will be committed to jail to serve the remainder of the sentence that had been meted against him.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 20TH DAY OF DECEMBER, 2024.

D. O. CHEPKWONY

JUDGE

