



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT VOI

CRIMINAL APPEAL NO. 16 OF 2020

MICHAEL PETER JOHN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

*(An appeal from the judgment of Hon. E.G. Nderitu Chief Magistrate
delivered by Hon. D. Wangeci Adet, Principal Magistrate, on 6th August
2019 in Voi Principal Magistrate's Court Criminal Case No. 544 of 2018).*

J U D G M E N T

1. Michael Peter John preferred the appeal herein against the judgment in Voi CMC CR. Case No. 544 of 2018 of Hon. E.G. Nderitu CM delivered by Hon. D. Wangeci Adet, Principal Magistrate on 6th August 2019. The Appellant was subsequently sentenced to serve 15 years imprisonment for the offence of attempted murder contrary to Section 220 of the penal code.
2. The particulars were that Michael Peter John on the 29th day of May 2018 at about 21.00hrs in Mazeras village within Taita Taveta County intentionally and unlawfully attempted to cause the death of Josephine Kache Kisamo by stabbing her with a knife on the stomach and dragging her into the railway line.
3. The grounds of appeal filed on 9th March 2020 were as follows:-
 - i. That the learned Magistrate erred in law & facts when it convicted the appellant and failed to observe that proof of attempted murder was not established vide Section of the Evidence Act.
 - ii. That the learned trial Magistrate erred in both law and facts when she convicted the appellant and failed to find that investigations done were shoddy.
 - iii. That the learned trial Magistrate erred in both law and facts when he relied on a defective charge sheet and could not have based a safe conviction.
 - iv. That the learned trial Magistrate erred in both law and facts when he relied on insufficient evidence to convict the appellant.
 - v. That the trial Magistrate declined to consider the appellants defence.
 - vi. That he should be supplied with proceedings to make reasonable grounds of appeal.
4. On 20/1/2021 when matter was brought up for Mention for purposes of taking directions the appellant indicated he had dropped all grounds of appeal against conviction and he only wanted the court to consider his mitigation on sentencing. He said he was a 1st offender and that his daughter was currently not going to school because of his confinement. He said that he had engaged himself in teaching at the prison. He said he was remorseful for what happened. He sought non-custodial sentence.
5. Ms. Mukangu for the Respondent opposed the appellant's plea to be released on non-custodial sentence. She said the appellant had lured the Complainant using the child he now claims he wants to take to school. She said the Complainant miraculously escaped death and that

release of appellant would expose her to fear of harm.

6. I have perused the evidence on record which is quite clear that appellant lured the Complainant from her parents' house to a forest/bush where he stabbed her and started dragging her towards the railway line. PW 2 & PW 3 found the 2 with the Complainant on the ground unable to stand due to the stab wound on her abdomen and profuse bleeding. Appellant claimed he and complainant had been attacked but the complainant told those who had been attracted by her cries that it is appellant who stabbed her.

7. Appellant pretended he wanted to garget a car to take the Complainant to hospital but the Complainant told those who had responded not to allow him leave as he would escape. PW 2 & PW 3 and other members of the public told him he should help them take Complainant to hospital but they passed by the police station where appellant attempted to escape but PW 2 and a police officer pursued and arrested him and he was placed in cells and charged after investigations were completed.

8. Looking at the appellants grounds of appeal none was related to his sentencing. He says that he has changed and that he was a 1st offender. Before being sentenced appellant merely said that court should be lenient and consider non-custodial sentence. The court said it had considered his Mitigation and passed a sentence of 15 years imprisonment. He said he had reconciled with the complainant who visits her.

9. This offence was committed on 29/5/2018, judgment delivered on 6/5/2019 and sentence passed the same day. The offence of attempted murder stipulates penalty of life imprisonment and therefore 15 years is for much lenient. The appellant lured the Complainant from her parents' home with the intention of killing her but her guardian Angel stood the ground making it possible for members of public to respond to her distress cries and not even help her but also managed to apprehend the appellant.

10. The offence committed was aggravated in nature and the appellant should serve and complete the sentence of 15 years. The appellant does not deserve leniency and mercy which he himself cannot give.

The appeal is therefore dismissed.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 18TH DAY OF MARCH, 2021 BY MICROSOFT TEAMS/OPEN COURT

HON. LADY JUSTICE A. ONG'INJO

JUDGE