

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

HIGH COURT MISC. CRIMINAL APPL.CASE NO. 72 OF 2018

WILSON KYALO MWENDWA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

**BEING AN APPLICATION FOR RE-SENTENCING FROM A JUDGEMENT DATED 20TH SEPTEMBER, 2018 DELIVERED BY
Hon. Lady Justice L. Mutende - Kitui High Court Criminal Appeal Number 21 of 2016.**

R U L I N G

1. **WILSON KYALO MWENDWA**, the Applicant herein, was charged with **attempted murder** Contrary to **Section 220 (a) of the Penal Code** The particulars are that on 21st October, 2013, at 7.15 pm at Site Estate, within Kitui Town, he unlawfully attempted to cause the death of Martha Mwendu Mbulungo by cutting off her both hands at the wrist joint and below the elbow respectively. He also inflicted cuts on her head and breast. The Applicant also, faced an alternative charge of grievous harm, but since he was convicted of the main charge, the alternative charge is not relevant in this application.

2. The Applicant was found guilty of the main charge after trial and sentenced to serve life imprisonment. He felt aggrieved and preferred an appeal vide Kitui High Court Criminal Appeal Number 21 of 2016, Hon. Lady Justice Mutende upheld the conviction but reduced the sentence from life imprisonment to 15 years in prison vide her judgement dated 20th September, 2018.

3. The Applicant has now approached this court asking for leniency and to be resented. He says he was a young man aged 20 years at the time of commission of the offence and that he is now 29 years old and reformed. He also states that, he has transformed for the period he had been in prison.

4. This court has considered this application and for the record, the Respondent through the Office of the Director of Public Prosecution had no objection to this application. That notwithstanding, this court has considered this application on its merit and find that, this application in the first place is incompetent and secondly, it totally lacks in merit.

5. It is incompetent for the reasons that the Applicant had on appeal got his sentence reduced from life imprisonment to a mere 15 years in jail. The Applicant was required to prefer an appeal, if he felt aggrieved by the sentence meted out by Honorable Justice Mutende. The provisions of **Section 364 (5)** of the Criminal Procedure Code ties the hands of this court from revising a sentence on a ground that is appealable. The fifteen (15) years' jail term is a consequence of an appeal by the Applicant. The court found it fit to revise the sentence downwards and the Applicant was at liberty to appeal if he felt the sentence was still harsh despite revision. This court having rendered itself by reducing the sentence cannot be approached again to further reduce the sentence meted out.

6. I have also considered this application on merit and find that this application is lacking and the Applicant ought to have counted himself very lucky. The nature of injuries inflicted on the victim (whose only fault according to her was declining romantic advances made to her by the Applicant) were really serious. According to the P3 form tendered by Dr. Patrick Mutuku (Prosecution Witness 2) as Prosecution Exhibit 4, the victim's both hands were amputated. One hand (right hand) was amputated from down the elbow while the left hand was amputated from the wrist joint. The doctor testified that the hands were amputated because of several fractures caused by a sharp object (panga). The victim, apart from losing her two hands, also suffered a serious cut on her left breast and shoulder.

From the evidence tendered, it was apparent that the Applicant was actually intent at killing her and actually left her for dead after inflicting the serious injuries on a road at 7:15pm.

7. This court has looked at the social inquiry report dated 19th April, 2021 and it is apparent that the report is quite adverse to this application. The victim and her family are still traumatized and have sold most of their earthly possessions to meet the medical expenses of the victim who had to be admitted in Kitui District Hospital on 21st October, 2013 until 9th December, 2013. She was then taken to Nairobi Women's Hospital where she was treated for two (2) weeks and later taken to Kikuyu Mission Hospital for further treatment.

There is no doubt that, the injuries inflicted were life threatening and the Applicant's intention as I have said were clear. I have no doubt in my mind that the trial court was justified to hand the Applicant a life sentence because, that's what the law under **Section 220 (b) of the Penal Code** provides. Looking at all the circumstances of this matter, I find that the Applicant really deserved a more deterrent sentence going by the serious nature of the offence, how it was committed, the circumstances and the revelation about victim impact assessment contained in the social inquiry report. However, this court finds that, because a court of concurrent jurisdiction reduced the sentence to 15

years my hands are tied. Suffices to say that, this application is incompetent and lacks merit for the aforesaid reasons. The same is dismissed. The Applicant should count himself very lucky and spend the time given in jail to reform, transform and perhaps find time after release to go and apologize to the victim and perhaps consider paying some compensation owing to the serious and permanent injuries caused to the young girl who no doubt has now been crippled permanently.

DATED, SIGNED AND DELIVERED AT KITUI THIS 25TH DAY OF MAY, 2021.

HON. JUSTICE R. K. LIMO

JUDGE