



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.516 OF 2018

FRED ATANDI MORARA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Fred Atandi Morara was convicted, with two others, of the offence of **attempted murder** contrary to **Section 220(a)** of the **Penal Code**. The prosecution was able to prove that on 14<sup>th</sup> December 2015 at Kangemi within Nairobi County, the Applicant, with others, unlawfully attempted to cause the death of Susan Wangui Thiong'o by stabbing her with knives. The Applicant was sentenced to serve four (4) years imprisonment on 19<sup>th</sup> March 2018. The Applicant made an application to have the period that he was in remand custody prior to his conviction taken into account. The Applicant stated that he was in remand custody for a period of one (1) year and eleven (11) months prior to his conviction. He urged the court to take into consideration that he had learnt his lesson in the period that he has been in prison. He was a first offender. Both his parents have died. His father died while he was in prison. He is reformed. He urged the court to exercise leniency on him.

Ms. Kimaru for the State while not opposing the application for reconsideration of the custodial sentence, urged the court to take into account the fact that the victim was seriously injured and robbed of her mobile phone during the incident. She was of the view that taking into consideration the entire circumstances in which the crime was committed, the sentence fitted the crime.

This court has carefully considered the rival submission made by the parties to this application. When the trial court sentenced the Applicant to serve the custodial sentence, it was exercising judicial discretion. The Court of Appeal in **Ahmad Abolfathi Mohammed & Another –vs- Republic Criminal Appeal No. 135 of 2016** (unreported) held at Page 25 thus:

**“As what is challenged in this appeal regarding sentence is essentially the exercise of discretion, as a principle this Court will normally not interfere with exercise of discretion by the court appealed from unless it is demonstrated that the court acted on wrong principle; ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive. In Bernard Kimani Gacheru v. Republic, Cr App No.188 of 2000 this Court stated thus:**

**“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, any one of the matters already stated is shown to exist.”**

In the present application, it was clear to this court that the trial court did not err neither did it take into consideration an irrelevant factor when it sentenced the Applicant to serve the custodial sentence that is being challenged. The Applicant pleaded with the court to take into consideration the period that he was in remand custody prior to his conviction. Although the trial court did not specifically indicate that it had taken into consideration that period, taking into consideration of the fact that the offence for which the Applicant was convicted attracts a maximum sentence of life imprisonment, a custodial sentence of four (4) years was lenient in the circumstances.

This court therefore finds no merit with the Applicant's application. He shall serve the sentence that was imposed by the trial court. The application is dismissed. It is so ordered.

DATED AT NAIROBI THIS 26<sup>TH</sup> DAY OF FEBRUARY 2020

L. KIMARU

JUDGE