



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

CRIMINAL APPEAL NO. 27 OF 2019

REPUBLIC.....APPELLANT

VERSUS

NICHOLAS OOKO NJUNGA1ST RESPONDENT

MICHAEL OTIENO NJUNGA.....2ND RESPONDENT

ALICE OWUOR NJUNGA.....3RD RESPONDENT

(Appeal from the Judgment and acquittal by Hon. T.Olando in Siaya Principal Magistrate's Court

Criminal Case No. 379 of 2017 delivered on 3rd May 2018)

RULING ON SENTENCE

1. On 21st January, 2020 this Court delivered judgment in this matter and found all the three Respondents guilty of the two Counts of (I) **Grievous Harm contrary to Section 234 of the Penal Code** and (II) **assault causing Actual Bodily Harm Contrary to Section 251 of the Penal Code**. The judgment aforesaid substituted/overturned the trial Court's judgment/verdict of not guilty in favour of the Respondents who were accused persons, of the respective offences, with findings of guilty. The Respondents were given an opportunity to mitigate which they did through their Counsel Mr. Ochanyo.
2. Following the mitigation, this Court ordered for Presentencing Probation Reports on each of the Respondents/ Convicts and Victims Impact statements which were availed to Court on 17.2.2020 albeit the Court date stamps show 10th and 14th February 2020 respectively.
3. I have considered the mitigations put forth by the Respondents/Convicts, the Probation Officer's Reports and the Victim Impact statements from each of the Complainants.
4. I have taken into consideration the fact that the Convicts are first offenders and that they are a family comprising a mother and his two sons. I take further cognizance of the fact that the Convicts have families that depend on them and that they pray for non-custodial sentence.
5. The Victims of the Offences sustained serious injuries. Grievous Harm carries up to a maximum of life imprisonment upon conviction. The 1st Complainant Daniel Otieno Odaga sustained very serious and life threatening injuries as per the P3 form, treatment notes and the current medical reports availed to court. The second Complainant Kennedy Ouma Owadho also sustained serious injuries. Those injuries have not healed and they and their families remain traumatized.
6. I have also taken into account the fact that there have been attempts to resolve the matter through Alternative Dispute Resolution and this court did encourage the process in accordance with the spirit and letter of **Article 159(2)(d) of the Constitution**, which attempts have not borne fruit.
7. I have considered the circumstances under which the offences were committed. The Complainants were not armed and there was no evidence that they went to attack the Respondents.
8. I find no provocation on the part of the Complainants that would have justified the kind of vicious attacks vented on them by the Respondents herein. From the severe injuries sustained, the 1st Complainant could easily have lost his life. The Respondents used lethal weapons namely, pangas to cut him into pieces. That was not justifiable or excusable or at all. Reading the evidence adduced before the trial court was akin to watching a horror movie. The Respondents took the law into their own hands and unleashed excessive unpardonable terror

against their fellow human beings whom they knew very well.

9. The objects of a sentence is, primarily, to punish for an offence and to reform the accused in such manner as to, as appropriate in the circumstances of the case, deter the repetition of the offence by the accused and others taking into account the moral blame-worthiness of the accused, the prevalence of the crime and the situation of the accused himself.

10. In **Gerald Ndoho Munjuga vs. Republic (2016) eKLR** the High Court on appeal cited with approval the Supreme of India in the **State M.P. vs. Bablu Natt** where the court held:

“Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straightjacket formula for sentencing an accused on proof of crime. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances”.

11. Thus, the principle governing imposition of punishment would depend upon the facts and circumstances of each case. In addition, in exercising its discretion in sentencing, the Court is called upon to take into consideration principles of proportionality, deterrence and rehabilitation and as part of the proportionality, analysis, mitigating and aggravating factors should also be considered.

12. Therefore having considered the nature of the offences committed, the principles of sentencing stated above, I sentence the Respondents/Convicts as follows:

Court 1:

I sentence each of the Respondents/Convicts to serve five (5) years imprisonment to be calculated from 21.1.2020 the date of judgment in this appeal. In the alternative, each of the Respondents/Convicts may be set at liberty upon payment into Court a fine of Kenya Shillings two Hundred Thousand KShs.200,000/= only.

Count II:

I sentence each of the Respondents/Convicts to serve one year imprisonment to be calculated from 21.1.2020 the date of Judgment in this appeal. In the alternative, each of the Respondents/Convicts may be set at liberty upon payment into Court a fine of Kenya Shillings Thirty Thousand KShs.30,000/= only.

13. In default of payment of the fines, the prison sentences imposed shall run consecutively.

14. I further order that upon the fines herein being paid into Court, the Court shall pay to the Complainants half of each of the fines imposed in the respective counts.

15. Orders accordingly.

Dated, Signed and Delivered at Siaya this 24th day of February, 2020

R.E. ABURILI

JUDGE

In the presence of:

Ms Odumba Prosecution Counsel for the Appellant

Respondents present

Mr. Ochanyo Advocate for the Respondents

CA: Modestar and Brenda.