



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT SIAYA**

**CRIMINAL APPEAL NO. 10 OF 2020**

**MOO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an Appeal against conviction and sentence in Criminal Case No. 198 of 2020*

*in the Principal Magistrate's Court at Bondo dated 18<sup>th</sup> May 2020*

*before Hon. S.W. Mathenge, Resident Magistrate)*

**JUDGMENT**

1. The appellant **MOO** was convicted on his own plea of guilty for the offence of preparation to commit a felony contrary to Section 308(1) of the Penal Code. He was sentenced to serve seven years imprisonment by Hon. S. Mathenge, Resident Magistrate in Bondo PM Cr. Case No. 198/2020.

2. He has appealed through his advocate Mr. Ochanyo challenging the Plea as taken on account that the Plea was equivocal and secondly that the sentence imposed was excessively harsh in the circumstances as the accused was a first offender.

3. The third ground which is now emerging by way of supplementary affidavit sworn by Theresa Achieng Onyango, the appellant's mother on 27/7/2020 attaching medical Report from Siaya County Referral Hospital dated 11/8/2019 shows that the appellant suffers from a mental illness hence he may not have been in sound mental state to take a Plea.

4. The Prosecution concedes to these facts and adds that the language of the court which the accused pleaded to was not shown.

5. I have considered the grounds of appeal and submissions by Mr. Okachi Senior Principal Prosecution Counsel for the Respondent State.

6. It is clear that there is a medical report showing the incapacity of the accused person to take plea which was not brought to the attention of the trial court. Nonetheless, I observe that the Plea was not unequivocal and from the facts read out in court, there was no indication that the accused who was found merely hiding in a banana plantation and holding a stone and panga had intended to commit the felony of Murder as alleged in the particulars of the offence, considering his mental status. If the accused threw a stone at the complainant and then escaped leaving behind his sandals, a panga and clothing, that in itself is not proof of preparation to commit the offence of Murder. With the medical report availed, it is clear that the appellant has a mental issue which should be handled by his family members taking responsibility to take him to hospital for treatment and not to leave him to wander around to pose a risk to other members of the society.

7. Accordingly, I allow this appeal, quash the conviction on an equivocal plea as the appellant was incapable of taking such plea and set aside the seven years imprisonment term imposed on the appellant.

8. I order that the appellant be released from prison forthwith and handed over to his mother **TAO** who has sworn an affidavit and who shall ensure that the appellant is checked into a hospital for appropriate treatment so that he is not a risk and danger to the public.

9. Orders accordingly.

**Dated, signed and Delivered at Siaya this 29<sup>th</sup> Day of July, 2020**

**R.E. ABURILI**

**JUDGE**