



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARSEN

HCCRA No. 32 OF 2016

K C K.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

JUDGEMENT

1. The Appellant pleaded guilty to a charge of “threatening to kill” contrary to section 223 (1) of penal code. He was convicted on his own plea of guilty and sentenced to five years imprisonment on 24/8/2016.

2. The appellant also pleaded guilty to a second count of resisting a lawful arrest contrary to section 253 (b) of the penal code and he was sentenced to a further 6 months imprisonment.

3. The appellant has appealed against the sentence on the following grounds;

(i) That he pleaded guilty *on trial*.

(ii) That he was sentenced to a total of Five (5) years and six months imprisonment for the offence of Threatening to kill c/sec. 223 (1) of the penal code and Resisting arrest c/sec 253(b) of the penal code in Cr. .case no. 372/2016 On 24/8/2016 before SPM'S Court Lamu.

(iii) That his wife promised to withdraw the case after pleading guilty but she changed the promise. That the charge was exaggerated to threatening to kill while it was just domestic conflict.

(iv) That he suffers from chronic asthma hence the sentence given to me is likely to disrupt his health.

(v) That the sentence of five (5) years is too harsh to him since he is young and married with two (2) children.

(vi) The sentence of five years will separate him from his aged parents who *need* his support.

(vii) That his children are young, they need education, fathers love and protection.

(viii) That he is a first offender hence praying to this honorable court for lenience).

(ix) That he will be glad if the appeal is going to be considered and proved.

(x) That he requests the court to reduce his sentence and even quash it if possible by so doing will cease the burden am shouldering at present.

4. The appellant filed the following written submission

(i) That am married to two wives with two children whereas am their sole bread winner and the provider for my ailing parents.

(ii) That am asthmatic and HIV Victim your lordship for me being imprisoned for 5 years 6 months without the trial magistrate weighing the whole situation on humanitarian grounds.

(iii) That I pleaded guilty on trial

(iv) That your lordship I was forced to plead guilty by the investigation officer together with the complainant who was my wife at police station so as to withdraw the charges from court and settle the case out of court but I came to realize very late that they have planned to fix me .

(v) That I could not establish what was between my wife and the arresting officers because they told me together with my wife to accept the charges so that me and my wife could solve it out of court., but after pleading guilty they all denied my wish and disappeared completely.

(vi) That I do hereby present my submission before this honorable court for the sake of justice

(vii) That I beg thy honorable court of appeal to consider my case and submission and if possible quash the sentence and let me free as this sentence am serving is a punishment to me together with my dependants as a whole.

5. The respondent submitted that the plea was unequivocal and that the appeal herein is an afterthought. The respondent urged the court to dismiss the Appeal and uphold the sentence.

6. I have carefully considered the submissions by both parties in this appeal. My findings are as follows:

(i) I find that the Appellant pleaded guilty and he saved the Court's time

(ii) The Appellant is a first offender and he has been in custody since he was arrested.

(iii) I accordingly reduce his sentence to the period already served.

(iv) I allow the Appeal only on sentence and order that the Appellant be set free forthwith unless lawfully held for any other reason.

Due to the security situation at Hindi Prison, the appellant could not be availed to court for this judgment which has been long pending and the judgment is now delivered on this 28th day of February, 2018 in the absence of the Appellant.

.....for the Appellant.

Mr. Kasyoka for the Respondent

Order to issue accordingly.

ASENATH ONGERI

JUDGE.