



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MARSABIT**

**CRIMINAL APPEAL NO. 13 OF 2018**

**GUYO SHAMA GUYO.....APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

(Being an appeal from the judgment of B.M. Ombewa Principal Magistrate delivered on 25.1.2018 in Criminal Case No.271 of 2017 in Marsabit Court)

**JUDGMENT**

The appellant was charged with three counts. The first two counts involve a charge of attempted murder Contrary to Section 220 (a) of the Penal Code. The particulars of each count are that the appellant on the 21<sup>st</sup> day of January, 2018 at Uman Sora in Marsabit Central Sub County within Marsabit County attempted unlawfully to cause the death of DADACHA SHAMA GUYO (1<sup>st</sup> count) and DALICHA JARSO (2<sup>nd</sup> count) by shooting at them. The third count is that of unlawful use of firearm by a public officer Contrary to Section 26(a)(1) of the Firearm Act, Cap 114 Laws of Kenya. The particulars of the offence are that the appellant on the 21<sup>st</sup> day of January 2018 at Uman Sora village in Marsabit Central subcounty within Marsabit County being a public officer namely national police reservist unlawfully discharged four rounds (4) of ammunition from mark four IV firearm S/No.PF323820.

The appellant pleaded guilty to the charge and was sentenced to six (6) years imprisonment for each count. The sentence is running concurrently. The grounds of appeal which are titled as “**mitigation of sentence**” are **THAT:-**

- 1. The appellant pleaded guilty to the charge.**
- 2. The sentence is too harsh**
- 3. The appellant committed the offence at a time when he was annoyed as his wife was having an affair with another man.**
- 4. The appellant is a first offender and is married with two wives.**

The appellant informed the court that he has six children. His elderly mother has been taking care of the children. He is praying for leniency. He committed the offence because of envy. The shots were not aimed at anyone. He was defending himself by trying to disperse the crowd.

Mr. Chirchir, prosecution Counsel, opposed the appeal. Counsel submit that the appeal is mainly on sentence. The appellant is a Kenya Police Reservist (KPR) who attempted to kill two people. He even engaged his fellow KPR in a shoot out. The sentence is not excessive.

This is a first appeal. The appellant pleaded guilty. He is not challenging the conviction. The appeal is on the six years imprisonment sentence. The facts of the case as read to the Court states as follows:-

**The facts of the case are that the accused namely Guyo Shama Guyo who is a KPR differed with his wife Diramu. In the course of the dispute his brother namely Dadacha shamo tried to intervene but did not succeed. Another relative called Kalicha and Dadacha Shamo then managed to hold the accused. The accused ran and brought in mark IV rifle and started shooting at them fired about 04 rounds of ammunition toward his brother and relative who intervened and towards his mother’s house where his wife was headed to. Accused then went away with his rifle. Complainants reported the incident to Chief who gave them another KPR to stay with them.**

**On 23.1.2018, the accused engaged the KPR who had been given to his family by the chief in exchange of fire. Accused then dropped his mark IV rifle and ran away. This firearm was taken by the new KPR who handed it over to the Police. On 24.1.18, accused went to seek refuge at his sister's house, he was locked up and Police officers were informed who went and collected him. He was subsequently charged.**

The record of the trial Court show that the appellant was arrested on 24.1.2018. He was arraigned in Court the following day. The charges were read over to the appellant and he pleaded guilty. The facts too were read over to the appellant and he pleaded guilty. The facts confirm that the appellant disagreed with his wife and resorted to using a firearm that had been entrusted to him. The incident as per the charge sheet occurred on 21<sup>st</sup> January 2018. There was the first shooting on 21.1.2018 which according to the facts involved about four (4) shots. The second shooting occurred on 23.1.2018. This time round it involved the appellant and a KPR who had been given to the appellant's family. Only four spent cartridges were produced. These could have been the cartridge that were spent on 21.1.2018. There are no spent cartridges for the second exchange with the fellow KPR.

Given the circumstances of the case, it is clear that the plea was unequivocal and the conviction is proper. The appellant had the whole day on 22.1.2018 to reflect on his actions and reconcile with his family. He opted to engage his fellow KPR on 23.1.2018. Even if he appellant's actions were driven by envy as he alleges, his decision to fire shots, though not aimed at his victims, was both careless and dangerous. He could have caused injury or death to those present. Being a KPR person who was entrusted with a firearm, he ought to have exercised restraint and maturity after disagreeing with his wife. I do find that the conviction is proper.

The appellant pleaded guilty to the charges. He is a first offender. The facts confirm that he is married. He has by now served over eleven months in prison. He pleaded guilty to the charges and saved ample Judicial time. The dispute involved his own family members. The trial Court did not call for a Probation officer's report. There are all possibilities that the complainants could have reconciled with the appellant. I do agree with the appellant that the shots were not aimed at the victims. No one was injured. I do find that the sentence is quite excessive. The appellant is sentenced to serve twelve (12) months Probation under the supervision of the Marsabit Probation officer on top of the period already served. I do further order that the Officer Commanding Marsabit County Police or any other officer in charge of the Kenya Police Reservists in Marsabit County not to allow the appellant to join the KPR in the next four (4) years.

In the end the appeal on sentence is allowed. The appellant shall serve the remaining sentence on Probation under the Marsabit Central Probation Officer for a period of twelve (12) months. The appellant shall not rejoin the KPR for the next four (4) years.

**Dated, Signed and Delivered this 17<sup>th</sup> day of December, 2018**

**S. CHITEMBWE**

**JUDGE**