



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NO.109 OF 2016

[Consolidated with HCRA NO.110/2016]

1. NICHOLAS MUGIIRA MUTUA

2. ANDREW NDUBI MANYARA.....APPELLANTS

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in criminal case No. 2581 of 2004 of the Senior Principal Magistrate's Court at Nkubu by Hon. SM Githinji – Senior Principal Magistrate)

JUDGMENT

NICHOLAS MUGIIRA MUTUA and **ANDREW NDUBI MANYARA**, the appellants, were convicted for the offence of attempted murder contrary to section 220(a) of the Penal Code.

The particulars of the offence were that on 21st November 2004 at Mwitumura village, Meru Central District of Eastern Province, jointly with another not before court, unlawfully attempted to cause the death of **JENNIFER MUKIRI MUNGANIA** by assaulting her and setting her body on fire.

The appellants were sentenced to serve twelve years imprisonment.

The appellants were in person. Their appeal is on sentence only.

The state opposed the appeal through Mr. Odhiambo, the learned counsel.

The facts of the prosecution case were briefly as follows:

The appellants in company of others alleged that the complainant was a witch. They thoroughly beat her and set her body on fire. She was rescued with severe burns and injuries.

This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **OKENO vs. REPUBLIC [1972] EA 32**.

Section 220 of the Penal Code provides as follows:

Any person who—

(a) attempts unlawfully to cause the death of another; or

(b) with intent unlawfully to cause the death of another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life, is guilty of a felony and is liable to imprisonment for life.

The offence has a maximum penalty of life imprisonment. The learned trial magistrate was very lenient in the circumstances of this case. The habit of branding other people as witches is primitive and a threat to life. It ought to be discouraged by all means lest gangs of hooligans take over in the rural areas in the guise of exterminating witchcraft.

From the foregoing observations, I am not going to disturb the sentence meted by the learned trial magistrate. The appeal is accordingly dismissed.

DATED at MERU this 28th day of April, 2017

KIARIE WAWERU KIARIE

JUDGE