

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KAKAMEGA

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 12 OF 2014

BETWEEN

ALFRED INZIANI LUKANO.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from Original conviction and sentence of Hon. S.M. Shitubi, CM dated 1st January, 2014 at the Chief Magistrate Court at Kakamega in Criminal Case No. 850 of 2012)

J U D G M E N T

1. The appellant ALFRED INDIANI LUKANO was charged with attempted murder contrary to section 220(a) of the Penal Code (Chapter 63 of the laws of Kenya). The particulars of the offence were that on 15th April, 2012 at Shipala Village, Virhembe Sub-location, Shibuye Location of Kakamega District, he attempted unlawfully to cause the death of Robert Luvembe by assaulting him with a panga.

2. The appellant was tried and convicted. He was sentenced to serve 10 years' imprisonment. He now appeals against the sentence only and in his petition of appeal, he states that the sentence was harsh and that the court did not consider his mitigation. He contended that he was remorseful and a first offender.

3. This is an appeal against a sentence and it has been held that the imposition of a sentence is within the discretion of the trial court. Such discretion must be exercised judiciously. As such the appellate court will only intervene if the sentence is imposed without due regard to established principles or that the trial court failed to take into account material facts or took into account immaterial or irrelevant facts. The appellate court will also intervene if the sentence is too harsh to the extent that it discloses a lack of the relevant considerations.

4. From the proceedings, the case against the appellant is that he attacked the complainant and two other persons suddenly and without provocation when they were directing the police to the scene of a murder. The complainant sustained a cut on the left ear, scalp, left index finger and left arm. The trial magistrate concluded that in fact he would have died. In his defence, the appellant contended that he was attacked but the magistrate disbelieved his case. The appellant did not say anything in mitigation.

5. Having considered the nature of the case, the fact that the appellant used a sharp weapon and hit the complainant on the head without any reason, I cannot say that the sentence was manifestly harsh. The maximum sentence for attempted murder is life imprisonment. 10 years' imprisonment in the circumstances was an appropriate sentence.

6. The sentence is affirmed. The appeal is dismissed.

Dated and delivered at Kisumu this 30th day of August 2017.

D.S. MAJANJA

JUDGE

Appellant in person.

Mr Ng'etich, Senior Prosecution Counsel instructed by the Office of Director of Public Prosecutions.