

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 414 OF 2016

ISAACK MUTHOGA CONSTANTION.....APPELLANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

The application herein is for revision of sentence. The Applicant was charged vide **Makadara Criminal Case No. 5288 of 2013** with the offence of attempted murder Contrary to Section 220 (a) of the Penal Code. It was alleged that on the 6th Day of November, 2013 at Kariobangi Estate within Nairobi County attempted unlawfully to cause the death of Muthue Kisigo Nguli by stabbing her on her back.

The Applicant was convicted on his plea of guilty and sentenced to serve seven (7) years imprisonment. The sentence was passed on 12/11/2013. He has therefore served close to three years of the sentence. The background leading the Applicant to committing the offence attests to a case of a person who was suffering from mental disturbance. He has severally narrated to this court that at that time, he was preventing someone who was lowering his sister's casket into a grave. According to the Applicant his sister had instructed him before she died that he should not allow anyone to lower her coffin into a grave. This prompted this court to make a referral for him to be treated at Mathari Mental Hospital. Although he has been treated, it appears he is still suffering from the same hallucinations. It seems to this court that he still does not think he attempted to kill anyone and all that he was trying to do was to prevent his sister's casket from being lowered into the grave. The best that this court can do for him is to release him so that his family can take him for treatment. It is clear that he has a mental issue that needs to be attended to. Keeping him in prison will only worsen his condition as he does not know that he committed an offence.

In the end, I set aside the remainder of sentence. I order that the Applicant be forthwith set free unless he is otherwise lawfully held. The prison should ensure that he is picked up from prison by a family member.

Dated and delivered at Nairobi this 23rd October, 2017.

G.W.NGENYE-MACHARIA

JUDGE

In the presence of:

1. Appellant in person.

2. Miss Kimiri for the Respondent.