



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**  
**CRIMINAL APPEAL NO. 51 OF 2016**

**JOHN MATHENGE WACHIRA ..... APPELLANT**

*Versus*

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence in Nanyuki Chief*

*Magistrate's Court Criminal Case No. 1103 of 2015 by Hon. W J Gichimu -*

*Principal Magistrate on 14<sup>th</sup> March 2016).*

**JUDGMENT**

1. **JOHN MATHENGE WACHIRA** (the appellant) was charged before Nanyuki Chief Magistrate's Court with the **offence of attempted Murder Contrary to Section 220 (a) of the Penal Code**. He pleaded not guilty but after that court received the evidence of **J W M** the victim in this case the appellant changed his plea and pleaded guilty to the charge. The trial court sentence the appellant to 10 years imprisonment. He has filed this appeal against sentence.
2. The facts of the case were that on 3<sup>rd</sup> October 2015 **J W M** was at home with her husband the appellant. They had some disagreement and although neighbours tried to reconcile them the appellant told one of them that he would do "**something bad**". **J W M** on hearing those words was determined to leave the appellant the following day.
3. At 5 a.m. of the following day the appellant attacked **J W M** and stabbed her at the neck. Appellant then strangled **J W M** until she lost consciousness. On regaining her consciousness **J W M** realized she had been pushed under the bed and she heard appellant packing some items. **J W M** heard a motor cycle stop outside their home and then leave. She realized that the appellant had left.
4. **J W M** was assisted by neighbours to get medical assistance. She was admitted in hospital for two weeks.
5. Photographs of blood stained clothes "leso" and the floor of the house were produced before court.
6. The P3 form was also produced which revealed that **J W M** suffered rugged deep laceration 8 cm by 3 cm on her neck and tenderness, bruises and laceration on her chest. The doctor found the probable weapon to have been a kitchen knife. The injuries were assessed as grievous harm.
7. The appellant in appealing against his sentence submitted that he was now reformed and that he had

received training while in prison.

8. He further submitted that he is the sole bread winner of a young family of two children.

9. There is no doubt that the appellant inflicted very serious injuries to J W M.

10. It needs to be borne in mind the injuries appellant inflicted on J W M and the fact that on inflicting those injuries the appellant did not help J W M to get medical assistance but rather left her for dead. It is inconceivable that a sentence of 10 years for such a crime and in the circumstances it was committed; being unprovoked; can be considered excessive.

11. The appellant on being convicted by the trial court presented mitigations which were more or less the same as he has presented to this court as grounds of appeal.

12. A case in point which shows the purpose of sentence is **REPUBLIC – V- JAGAN& ANOTHER [2001] KLR** where it was held:-

*“The purpose of a sentence is usually to disapprove or denounce unlawful conduct as a deterrent to deter the offender from committing the offence, to separate offenders from society if necessary to assist in rehabilitation of offenders, and in retribution by providing for reparation for harm done to victims in particular to society in general. It is also seen as promotion a source of responsibility in offenders”.*

13. The appellant has not shown that he is a good candidate for reduction of sentence. Further I bear in mind that the trial court considered the relevant factors while sentencing him and in sentencing him to 10 years considered that it represented the seriousness of the offence he had committed. The trial court cannot be faulted in its reasoning while sentencing the appellant.

**14. In view of the above appellant’s appeal against sentence is dismissed. The trial court’s sentence is confirmed.**

**DATED and DELIVERED at NANYUKI this 20<sup>th</sup> day of December 2017**

**MARY KASANGO**

**JUDGE**

**Coram**

Before Justice Mary Kasango

Court Assistant: Njue/Mariastella

Appellant: John Mathenge Wachira.....

For state: .....

Language .....

**COURT**

Judgment delivered in open court

**MARY KASANGO**

**JUDGE**