



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO 10 OF 2012**

**(FORMERLY NYERI HIGH COURT CRIMINAL APPEAL NO. 75 OF 2011)**

**(Appeal against Conviction and Sentence in Kangema SRM Criminal Case No 14 OF 2011 – D  
Orimba, SRM)**

**GERALD GATAWA MUTHOGA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

1. The Appellant **Gerald Gatawa** was on 3/02/2011 convicted after trial of one count of *threatening to kill* contrary to **section 223(1)** of the *Penal Code* and another count of **assault causing actual bodily harm** contrary to **section 251** of the same Code. He was sentenced to serve 3 years and 1 year imprisonment respectively, both sentences to run concurrently. He appealed against both conviction and sentence. On 23/07/2012 the Appellant was released on bail pending disposal of his appeal. This was after he had served 1 year and 5 months of his sentence. The Republic had no objection to bail.

2. In both offences the complainant was the Appellant's father, **Peter Gatawa**. On 20/07/2016 at the hearing of this appeal, the Appellant's learned counsel Mr. Kimwere informed the court that the Appellant's release on bail was based upon his father's affidavit to the effect that he had fully reconciled with his son, and that his continued imprisonment was adversely affecting his (father's) as well as his wife's (Appellant's mother's) health. Mr. Kimwere further stated that in these circumstances he had been instructed by the Appellant to abandon the appeal against conviction and urge only the appeal against sentence. He pointed out that the Appellant has always been remorseful after the conviction and suggested that the time served before he was released on bail was sufficient punishment for his transgressions against his father.

3. In his response, learned prosecution counsel Mr. Njeru fully agreed with his learned friend's approach. He had no objection to the court interfering with the sentence as it may deem appropriate. He pointed out that the Appellant was about 25 years old when convicted and sentenced.

4. Reconciliation, especially within the family unit, is always a good thing, even when it comes after conviction and sentence. The Appellant's father (and no doubt his mother as well) appear to have fully forgiven the Appellant for his transgressions. The sentences meted out to him were perfectly lawful and well deserved in the then circumstances of the case. Those circumstances however changed with the Appellant's remorse and his parents' forgiveness leading to reconciliation.

5. I am therefore happy to interfere with the sentence of 3 years imprisonment meted out to the Appellant on the 1<sup>st</sup> count. I will set aside that sentence and substitute there for the period served before he was released on bail. The sentence of 1 year imprisonment in respect of the 2<sup>nd</sup> count was already fully served at the time of his release and will not be interfered with. To that limited extent only is the appeal against sentenced allowed.

6. The appeal against conviction having been abandoned, the same is hereby dismissed. It is so ordered.

**DATED AND SIGNED AT MURANG'A THIS 13<sup>TH</sup> DAY OF OCTOBER 2016**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT MURANG'A THIS 14<sup>TH</sup> DAY OF OCTOBER 2016**