



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KITUI
CRIMINAL APPEAL NO. 58 OF 2015

BEATRICE NGWASI KYUSYA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

*(Being an appeal from the original conviction and sentence in **Mutomo Senior Resident Magistrate's Court Criminal Case No. 267 of 2013** by **Hon. S. K. Mutai Ag. P M** on 31/03/14)*

J U D G M E N T

1. **Beatrice Ngwasi Kyusya**, “the Appellant” was charged with the offence of **Attempted Murder** contrary to **Section 220(6)** of the **Penal Code**. Particulars of the offence were that on the **30th** day of **November, 2013** at about **5.00 a.m.** at **Mumbuni Village, Kyatune Location** of **Mutomo District** within **Kitui County**, with intent attempted unlawfully to cause the death of **Francis Kiusya alias Kivao** by stabbing him with a sword.
2. In the second count, she faced a charge of **Attempted Suicide** contrary to **Section 226** as read with **Section 36** of the **Penal Code**. Particulars of the offence were that on the **30th** day of **November, 2013** at about **5.00 a.m.** at **Mumbuni Village, Kyatune Location** of **Mutomo District** within **Kitui County**, with intent, she attempted to kill herself by taking a poison namely **Diazonol**.
3. She was tried convicted and sentenced to serve **10 years imprisonment** on the 1st count and **two (2) years imprisonment** on the second count. Sentences were to run concurrently.
4. Being dissatisfied with the sentence imposed she mitigates on grounds that the sentence meted out was harsh and she is a single parent with **Seven (7) children**.
5. In her written submissions she stated that life in prison is demeaning, humiliating and dehumanizing. She has been rehabilitated and acquired skills in dressmaking, baking and knitting. Her children need parental care.
6. In a response thereto, the State through **Mr. Njogu** a Prosecuting Counsel opposed the appeal arguing that the sentence was not excessive. He urged the court to uphold the sentence imposed.
7. I have been called upon to interfere with the sentence imposed by the Lower Court. In determining the issue I must reconsider circumstances in which the Lower Court came up with the sentence imposed and come up with my own conclusion bearing in mind that I had no opportunity of hearing the Appellant

mitigate.

8. In the case of **Shadrack Kipkoech Kogo vs. Republic, Eldoret Criminal Appeal No. 253 of 2003** the Court of Appeal held that:

“Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered with. (Also see sayeka vs. Republic (1989) KLR 360)

9. The sentence provided for the offence the Appellant was charged with and convicted for is upto life imprisonment.

10. Taking into consideration circumstances in which the offence was committed, the offender (Appellant) inflicted serious injuries on the person of the Complainant, her husband and attempted to commit suicide. In sentencing her, the trial court took into consideration mitigating factors. In the premises the sentence imposed was not excessive or harsh. The appeal lacks merit, accordingly, it is dismissed.

11. It is so ordered.

Dated, Signed and Delivered at Kitui this 12th day of October, 2016.

L. N. MUTENDE

JUDGE