

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 82 OF 2014

MICHAEL KIMANZI JEAN PETER..... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant was charged in the subordinate court with three counts. Count 1 was for threatening to kill contrary to section 223 (1) of the Penal Code. The particulars of the offence were that on the 21st August 2014 at Kalisasi Sub Location Mwingi Central District in Kitui County without lawful excuse uttered words threatening to kill Kesia Wanjiru Muthui with a panga. Count 2 was for wearing uniform without authority contrary to section 184 (1) of the Penal Code. The particulars of offence were that on the 22nd August 2014 at Kalisasi Sub Location within Mwingi District Kitui County not being a person serving in the disciplinary forces, without the permission of the defence Cabinet Secretary, wore one pair of long trousers the uniform of Kenya Defence Forces. Count 3 was for being in possession of cannabis sativa contrary to section 3 (1) (2) a of the Narcotic Drugs and Psychotropic Substance Control Act no. 4 of 1994. The particulars of offence were that on the same day and place was found with narcotic drugs namely cannabis sativa (bhang) to wit 200gms with a street value of Kshs. 2000/= in contravention of the said Act.

He was first arraigned in court on 25th August 2014. He was recorded as admitting count 1 and count 2 but denied count 3. The matter was adjourned to 26th of August 2014 for the facts. On that day the three counts were again read to him and he admitted all of them. A plea of guilty was thus entered against him on all the three counts. After the facts were summarized, he admitted them. He was convicted and sentenced to serve 7 years imprisonment on count 1, one month imprisonment on count 2 and 5 years imprisonment on count 3. The sentences were to run concurrently.

He has now appealed to this court. The contents of the grounds of appeal show that he is appealing against both conviction and sentence. However at the hearing of the appeal he said that he committed the offences but was mentally unwell. That he was now asking for forgiveness as the sentence of imprisonment was too severe. He thus wanted the sentence reduced.

The Learned Prosecuting Counsel Mr. Orwa opposed the appeal. Counsel submitted that the appellant was correctly convicted on his own plea. The charge was read to him in Kiswahili and he pleaded guilty to all three counts. The court went out of its way to warn him of the seriousness of the offences but he still pleaded guilty to the 3 counts. He also admitted the facts. There was thus no frame up. Counsel concluded by stating that the appellant had also not shown how the sentence could be said to be severe.

I have considered the appeal, the submissions of counsel and the appellant. I have also perused the record. In my view the plea of the appellant to the three counts was unequivocal. He pleaded guilty even after having been cautioned by the magistrate about the seriousness of the charges. He cannot thus come to say on appeal that the plea was wrongly recorded. An accused is also presumed to be of sound mind. There is no evidence on record that he was of unsound mind. I thus dismiss the appeal against conviction.

With regard to the sentences, the three offences were separate crimes. The learned magistrate convicted for the three offences and ordered the sentences to run concurrently. In my view the trial court

exercised its discretion properly in ordering the sentences to run concurrently. The offence of threatening to kill was a serious offence. The appellant was also not a first offender. He had a previous conviction of possession of cannabis sativa and wearing uniform without authority. I thus find no merits in the appeal against sentence.

To conclude I find no merits in the appeal. I dismiss the appeal and uphold both the conviction and the sentence of the trial court.

Dated and delivered at Garissa this 23rd day of April, 2015

GEORGE DULU

JUDGE