

REPUBLIC OF KENYA

High Court at Meru

Criminal Appeal 220 of 2003

DUBA WARIO GUYO.....APPELLENT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant was convicted by SPM Court Moyale for an offence of Attempted Murder contrary to section 220 of the Penal Code. He was sentenced to 26 years imprisonment on the 13 September, 2003. He filed his appeal dated 23rd September 2003 and received in this court on 5th November, 2013. Being aggrieved by the conviction and sentence the Appellant filed his petition of appeal which has set out nine grounds.

In view of the facts that we do not have the proceedings of the lower court and the fact that the Appellant has now abandoned his appeal against the conviction I see no point of setting out the nine grounds of Appeal as they are all related to the conviction.

When he Appellant appeared before the court for his Appeal he urged that he was only interested in having this court consider the sentence. He urged that he has been serving prison sentence since 13th September 2003. He says that he was grateful to have the opportunity to address the court and inform it that he has reformed. That during his time in prison he has received training and he feels he will be very useful to the society if his appeal is allowed. He said that he has suffered enough punishment.

Mr. Moses Mungai learned State Counsel left the matter for the court to decide.

I have considered this Appeal, which is against the sentence. Unfortunately the proceedings of the Lower Court are not before me. All the correspondences requesting for the file to be forwarded to this court from Moyale Law Courts ranging from 10th November, 2003 to date did not bear any fruit. The Appellant cannot be punished for the negligence of others for which he has no control. Even though the circumstances of the case are not before me I will deal with this appeal based on the law.

The Appellant was convicted of Attempted Murder under section 220 of the Penal Code. A person convicted of this offence is liable to imprisonment for life. The Appellant has served more a third of the sentence he appears to be remorseful for the offence. He says that he has reformed and assures the court that he will be useful to the society if released. I find that having served 10 years of imprisonment less four months, he has served sufficient punishment for the offence and must have learned his lesson in the process. In the circumstances I do allow the Appellant's appeal by setting aside the sentence of 26 years imprisonment, and in substitution thereof reduce the sentence to the period already served.

DATED, SIGNED AND DELIVERED THIS 23RD DAY OF MAY, 2013.

LESIIT, J

JUDGE.