



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL CASE NO. 72 OF 2008

LESIIT, J

FRANKLINE MUNENE MBAE.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

(From the original conviction and sentence of Senior Resident Magistrate N. N. Murage at Chuka, Criminal Case No. 57 of 2012).

JUDGMENT

1. The Appellant pleaded guilty and was convicted of attempted suicide contrary to section 226 of the Penal Code. he was sentenced to two years imprisonment
 - a. **The learned Senior Resident Magistrate erred in law and in fact in that he agreed to fix the case for hearing on 29.8.2012 un procedurally without any moved by any person which was prejudicial to the appellant.**
 - b. **The learned Senior Resident Magistrate erred in law and in fact in that he failed to notice that the allegations of bad behavior by one Mr. Kibaara after 3 days of probation were motivated by ulterior motives and prejudicial to the Appellant.**
 - c. **The learned Senior Resident Magistrate erred in law and in fact in that he completely failed to consider the statement of the appellant that the Appellant’s father was driving him to total frustration.**
 - d. **The learned Senior Resident Magistrate erred in law and in fact in that he failed to notice that the appellant was suffering from dysfunctional family conflicts and hence needed psychiatric assistance more than imprisonment.**
 - e. **The learned Senior Resident Magistrate erred in law and in fact in that he failed to inquire and grasp the conflicts in the family and the possible resolution but choose to blindly accept the version of Mr. Kibaara who was prejudiced against the Appellant.**
 - f. **The sentence of imprisonment for 2 years without option of a fine is unfair, inappropriate and severe in the circumstances of this case.**

2. When the appeal came up for hearing, Mr. Gituma withdrew the appeal against conviction and urged instead against sentence. He urged that the Appellant pleaded guilty to the charge and that the mere fact he was attempting to kill himself was a sign of illness. Counsel urged that in circumstances the sentence was harsh and that it was of no assistance to the Appellant.

3. Mr. Moses Mungai was for the state. he opposed the appeal. Learned State Counsel urged that the Probation Officers Report was clear that the Appellant was not abiding by a previous POR Orders and that family problems were persisting. Counsel urged that these were the facts the court considered before it came to the conclusion that rehabilitation had failed and that isolation from members of the family was necessary.
4. I have considered the Appellant's appeal against sentence. I noted that he served one month of the two year sentence before he was released on bail pending this appeal.
5. The offence Appellant faced is a misdemeanour. The maximum sentence for a misdemeanor is three years imprisonment. I noted from the record that the learned trial magistrate called for a Probation Report before sentence. The Probation Officer's report was negative against the Appellant and did not recommend a non custodial sentence.
6. The Appellant has been on bond for the last one year and one month. Nothing adverse has been reported against him. The Probation Officers sentence Review Report I called for dated 13th November, 2013 has recommended a non custodial sentence. This is after confirming that the Appellant had stabilized, that he had married again and that he had come to an understanding in his relationship with his father.
7. I will therefore allow the appeal set aside the sentence of 2 years imprisonment and in substitution place the Appellant on a Probation term of 3 years. During this period he should be of good behavior, keep away from bad company or influence and undergo Guidance and Counseling provided under probation and obey orders by Probation Officer. In default of any of this Appellant is warned he may be brought back to court to face an alternative sentence.
8. Those are my orders.

DATED SIGNED AND DELIVERED AT MERU THIS 13TH DAY OF NOVEMBER, 2013.

J. LESIIT

JUDGE