

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT KAKAMEGA

HCCRA NO. 199 OF 2012

AMOS WAMBANIAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From the original conviction and sentence of L. M. Nafula SPM, Mumias, Criminal Case No. 740 of 2012)

JUDGEMENT

The appellant herein Amos Wambani was originally charged before the SPM's Court Mumias with the offence of threatening to murder contrary to Section 223(1) of the Penal Code. Particulars of the offence were that on the 13th day of August 2012 at Emakale village, Mayoni Sub-Location, Matungu Location in Matungu District within Kakamega County without lawful excuse caused Wycliffe Wambani to receive a threat to kill the said Wycliffe Wambani by sending him a threatening letter stating that he would become a criminal and kill the said Wycliffe Wambani.

The appellant was convicted on his own plea of guilty. He was then sentence by the trial court to serve 5 years imprisonment. He has now appealed before this court on sentence alone asking this court for leniency. (The appellant was sentence on 15.8.2012 and has since served over one year in prison). In mitigation, he had asked the trial court to consider that this threat was made in anger and it emanated from a family disagreement and the person who was threatened is also his father.

In sentencing him, the trial magistrate indicated that the appellant's mitigation had been considered but nonetheless, the offence was serious.

It is trite law, that the appellate courts should not interfere with judicial discretion and especially where the discretion is exercised judiciously.

However, given that this was a family dispute, sentencing him to 5 years jail would not help this situation but would fuel the problem and make it worse. This would have been a fit case for the court to consider a report from a probation/community service officer which the court failed to appreciate. I do not find a sentence of 5 years appropriate in the circumstances. I therefore revise the sentence of 5 years and order for a probation report before fresh sentence is given.

DATED THIS 11TH DAY OF DECEMBER 2013

HELLEN S. WASILWA

JUDGE

DELIVERED THIS 11TH DAY OF DECEMBER 2013

S. J. CHITEMBWE

JUDGE