



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NYERI**  
**CRIMINAL APPEAL NO.151 OF 2007**

**CHARLES NJOROGHE THECHE.....APPELLANT**

**-versus-**

**REPUBLIC.....RESPONDENT**

*(Appeal from the original conviction and sentence imposed by R. N. Muriuki, Senior Resident Magistrate sitting at Nanyuki in Senior Resident Magistrate's Criminal Case No.450 of 2005 delivered on 26<sup>th</sup> July, 2005).*

**J U D G M E N T**

Charles Njoroge Theche, the appellant herein, was tried on a charge of attempted murder contrary to Section 220(a) of the Penal Code. The particulars of the offence are that on the 9<sup>th</sup> day of March 2005, at Nanyuki Town Hall in Laikipia District within the Rift Valley Province, attempted unlawfully to cause the death of Tabitha Nyambura Mwangi by cutting her with a sword all over the body. At the end of the trial the appellant was convicted and sentenced to 15 years imprisonment. Being aggrieved by the decision, the appellant preferred this appeal.

On appeal, the appellant put forward the following grounds in his petition:

***“1. That I pleaded not guilty to the charge.***

***2. That the learned trial magistrate erred in law and fact by not considering that the complainant was my real wife and there was a third person who was her boyfriend and that he was the one who slashed the complainant without his intention.***

***3. That none of the prosecution witnesses told the court that he or she witnessed me coming to the scene of crime with a panga.***

***4. That I claimed that P.W.3 was the one who wanted to kill me and he accidentally slashed the complainant who was her boyfriend.***

***5. That was a serious case which needed proper investigation but there was no investigation was done.***

***6. That I pray the Occurrence Book of 9<sup>th</sup> March, 2005 brought on the hearing of this appeal to justify that I went to the complainant for a peaceful talk for failure of our child to be absent in school.***

***7. That the independent witness P.W.3 told the court he saw me with a panga but he ran away, he did***

*nothing to help the complainant nor did he scream for help.*

**8. That the learned trial magistrate erred when rejecting my defence adequately and I have stated how we had involved with P.W.3 and the complainant and I had produced a photo of both my wife and P.W.3.**

**9. That I suffer a serious disease Epilepsy which is dangerous and needs a special watch.**

**10. That the sentence is manifestly harsh.**

**11. That I pray to be present during the hearing of this appeal, and to be served with a copy of court proceedings for more submissions.”**

Before considering the merits of the appeal, let me set out in brief the case that was before the trial court. The prosecution's case was supported by the evidence of six witnesses. Tabitha Nyambura Mwangi (P.W.2) told the trial court that on 9<sup>th</sup> March 2005, while she was at her place of work in the Nanyuki Mayor's office, the appellant who is her estranged husband stormed in whereupon he set upon her. P.W.2 said the appellant assaulted her by cutting her using a panga on the hand, leg, shoulder and the back. P.W.2's left wrist was severed off. Joseph Gicheru (P.W.3) said he met the appellant in the morning of 9<sup>th</sup> March 2005, while he was cleaning the Nanyuki Town Clerk's offices. The appellant is said to have told P.W.3 that he was looking for the Town Clerk and another person. P.W.3 said he saw the appellant open the door leading to the Mayor's Office where he heard him ask P.W.2 about the whereabouts of a child. Shortly P.W.3 heard the complainant (P.W.2) scream. He rushed to the Mayor's Parlour where he saw a severed hand on the floor with blood all over the floor. P.W.3 claimed he saw a panga which the appellant had. George Gitonga (P.W.4), said he saw P.W.2 emerge from the Mayor's Offices with serious injuries on the hand and head. P.W.4 rushed P.W.2 to hospital for treatment. Lazarus Maina (P.W.5) stated that on 9<sup>th</sup> March 2005, he went to the offices of the Nanyuki Town Clerk where he met P.W.2. He claimed he had seen the appellant that day at the Municipal Council's gate. P.W.5 said he saw P.W.2 run while the appellant was running after her while armed with a sword. P.W.5 said he managed to hold the appellant and snatch the sword from him. P.W.5 saw P.W.2 bleeding with her hand severed off. Andrew Mwaura (P.W.6) visited the Municipal Council's Offices on the instructions of the Officer Commanding Station where he rearrested the appellant who had been arrested by the Council Security Personnel for assaulting P.W.2. P.W.6 collected the severed hand and also visited Cottage Hospital where P.W.2 was admitted. P.W.6 took possession of the sword which he produced as an exhibit. Dr. Abid Bhutt (P.W.1) produced the medical report he had prepared on P.W.2. P.W.1 noted in his report that P.W.2 had multiple lacerations on the skull, on the back and had an amputation of the left arm at the level of the wrist joint. P.W.1 formed the opinion that the injuries were inflicted by the use of a sharp object. The doctor categorized the injuries as grievous harm.

When placed on his defence, the appellant gave unsworn testimony. He claimed that when he visited the school where his daughter was schooling he was informed that the child had not been to school for two weeks. On 9<sup>th</sup> March, 2005, the appellant said he went to see the complainant at her place of work. The appellant said the complainant (P.W.2) told him that he should not bother about their daughter because she already had another father. The complainant claimed another person came with a sword and attempted to cut him. He claimed he took a chair to shield himself and in the process P.W.2's hand was chopped off. The complainant said he had a grudge with P.W.3 because he had taken a photograph with his wife (P.W.2). The appellant denied being in possession of a panga.

After taking into account the evidence tendered by both sides, the Learned Senior Resident Magistrate came to the conclusion that the prosecution had adduced sufficient evidence that proved the case against the appellant beyond reasonable doubt. Though the appellant listed a total of eleven grounds of appeal, those grounds may be summarized to three grounds. First, that the prosecution had not established proof beyond reasonable doubt. Secondly, that the appellant's defence was rejected without due regard. Thirdly, that the sentence meted out is harsh and excessive.

Let me consider the above mentioned grounds in their chronological manner. The first ground is to the effect that the prosecution did not establish proof beyond reasonable doubt. The appellant pointed out that it is possible that someone else had inflicted the injuries complained of. He claimed that P.W.3 attempted to kill him and in the process P.W.2 was cut. Miss Ngalyuka, Learned Senior State Counsel was of the view that the prosecution had proved their case against the appellant beyond reasonable doubt. It is pointed out that the appellant was seen by P.W.3 cut the complainant (P.W.2) using a sword which was identified and produced in court as an exhibit. I have on my part re-evaluated the evidence and I think there was sufficient evidence to sustain a conviction. There is no doubt that the appellant was placed at the scene of crime. P.W.3 saw the appellant enter the offices of the Mayor, Nanyuki Municipality where the complainant was working. P.W.3 heard the appellant demanding from the complainant to give him reasons why their daughter was out of school shortly before he heard P.W.2 scream. P.W.3 rushed to the Mayor's Parlour where he saw the complainant's severed hand on the floor of that office. P.W.5 stated that on the fateful morning he had seen the appellant in possession of a sword. In fact P.W.5 was the one who snatched the sword from the appellant. I am convinced that the evidence tendered by prosecution clearly proved that the appellant was the only person who inflicted the injuries. The appellant's assertion that the injuries may have been inflicted by P.W.3 does not make sense. If P.W.3 had a love affair with P.W.2 as the appellant seems to allude, then there is no reason why he would have assaulted his lover. In any case she was already separated with the appellant by that date.

The second ground argued by the appellant is that his defence was dismissed without being given due attention. I have reconsidered the appellant's defence. The appellant's defence is to the effect that P.W.3 had a grudge with him over a love triangle between them over P.W.2. He claimed that someone attempted to cut him using a sword. He said he used a chair to shield himself and that is when the complainant's arm was chopped off. After a careful reconsideration of the evidence, I have come to a conclusion that the appellant's defence was a make up story. The medical evidence tendered by P.W.1 clearly show that the complainant sustained multiple injuries and not just a single cut as alluded. It is clear from the evidence of P.W.5 that a sword was recovered from the appellant. I find that the appellant's defence was considered and properly rejected by the trial magistrate.

The last ground argued is to the effect that the sentence is harsh and excessive. The offence of attempted murder attracts a maximum sentence of life imprisonment. The appellant was sentenced to 15 years imprisonment. In my view the sentence is not harsh nor excessive.

In the end, I see no merit in the appeal. It is dismissed in its entirety.

**Dated and delivered this 2<sup>nd</sup> day of December, 2011.**

**J. K. SERGON**  
**JUDGE**