

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI**

Criminal Appeal 86 of 2006

BERNARD MUGAMBI MBOROGI APPELLANT

Versus

REPUBLIC ACCUSED

(Being an appeal against the conviction and sentence by R. N. MURIUKI Senior Resident Magistrate, in the Senior Resident Magistrate's Criminal Case No. 1555 of 2005 at Nanyuki)

JUDGMENT

The appellant was charged with attempted murder contrary to section 220 of the penal code. After being tried by the lower court he was convicted as charged and sentence to 15 years imprisonment. He was dissatisfied with that conviction and preferred an appeal against conviction and sentence. At the hearing of the appeal the appellant abandoned the grounds of appeal relating to conviction. He proceeded on appeal on sentence alone. In his submissions the appellant stated that complainant was his wife. He informed the court that he has now reformed and wanted to become a good citizen. The state counsel did not oppose the appeal against sentence. The state was of the view that since the offence came about after a quarrel between a wife and a husband that the lower court should have considered the appellants mitigation. Before an appellant court can interfere with the trial court sentence, it must be satisfied that either the sentence imposed was manifestably excessive or that the trial court ignored or failed to consider certain matter or circumstances which ought to have been considered while passing sentence. See the case of KANIKI vrs R (1990 -94) EA. The facts of this case are that on 6th July 2005 The complainant and the appellant seemed to be having matrimonial disharmony. On that day they both appeared before the OCS at Nanyuki Police Station. The complainant related to the OCS her complaints against the appellant. The appellant being asked to respond said that there was no problem between them. They were dismissed by the OCS and requested to return the next day with the appellant. The complainant left the police station in the company of friends who had escorted her there. On their way they met the appellant. The appellant asked the complainant to stop and speak to him. The complainant declined and after a few steps she was stabbed on the shoulder. On looking behind she saw it was the appellant who stabbed her. The appellant stabbed her again twice on the head and in the neck. She became unconscious and fell down. She regained her consciousness two days later in the hospital. She was hospitalized for one week. The incident occurred at 3 pm. It was witnessed by many. PW 3 the Clinical Officer said that the complainant had six cuts. On being admitted in hospital she had to receive blood transfusion. This offence attracts a maximum of life imprisonment. The learned magistrate in passing sentence considered the mitigation offered by the appellant. The appellant in mitigation said that he was remorseful. He further said that he was a young man with a family and a young child. While urging his appeal the appellant said that he was now a reformed man. Considering the sentence passed against him by the lower court of 15 years and considering the offence I find no reason to interfere with that sentence. The offence was serious which it does seem if people did not intervene might have ended in the death of the complainant. The sentence of 15 years is not excessive nor harsh. The learned magistrate did not proceed on wrong principle. She considered the relevant circumstances in passing sentence. The appeal against sentence therefore is hereby dismissed.

DATED AND DELIVERED THIS 24TH DAY OF JUNE 2008

MARY KASANGO

JUDGE