

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT EMBU

Criminal Appeal 101 of 2006

LUCY MUTHONI WACHIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant was charged with 4 counts of attempted murder contrary to Section 220(a) of the Penal Code. She was tried and convicted on all the counts. She has filed 4 grounds of appeal mainly being that the Trial Magistrate failed to consider that there was a family fight between herself and her husband resulting in the injuries he received and that the Trial Magistrate failed to consider the medical evidence showing that Appellant had mental problems. And that sentence of five years is excessive.

On the day appointed for hearing the appeal the Appellant said that she sought forgiveness. The state counsel then submitted that the appellant had abandoned her appeal and she appears to plead against sentence. Mr. Omwega proceeded to submit that the offence carries life imprisonment and is of domestic violence nature. The sentence of 5 years is very lenient. In reply the accused stated that she was being treated for mental problems.

I have perused the record. The evidence of PW6 Dr. Paul Mbaru shows that the appellant was sent to him for assessment of age and he found her clinically depressed. He prescribed anti-depressed drugs. There was no finding of mental problems to disable the appellant. And this aspect was not pursued by the appellant. In her defence medical report filed PW6 “mentally she has affective (mood). Disorder – Depression”. The doctor did not certify that she was mentally disabled. The defence of insanity is to be raised by the accused but in the proceedings the appellant never raised that defence. Also the Appellants talks of domestic fight but there is no evidence of a fight. PW1 said he awoke and found himself bleeding. His wife was not in the room. He could not say it was his wife who hit him. He did not see her do it. Medical report says he had a fracture in the lower jaw and a deep cut and was caused by heavy object. The presence of heavy piece of wood exhibited is not connected with the heavy object or with the wound. There is no evidence of a fight, infact it is not known who inflicted the injury. Looking at the exhibited photograph it cannot be said to be a pool of blood there is exaggeration here.

In this appeal the appellant pleads for reduction of sentence so that she can be united with her young children. The facts disclosed on the record constitutes what is called circumstantial evidence. He own statements in cross-examination and grounds of appeal tends to show that she is aware of the seriousness of the offence she committed.

For these reasons I find the sentence of 5 years not excessive in the circumstances of this case. I find no reason to interfere in the conviction or sentence. The appeal is dismissed.

Dated this 22nd November, 2007.

J. N. KHAMINWA

JUDGE

22/11/2007

Khaminwa – Judge

Njue _- Clerk

Appellant present

Kimathi for State

Read in open court.

J. N. KHAMINWA

JUDGE