



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL MISC.APPLICATION NO.106 OF 2003**

**JASON NYAKUNDI .....**  
**APPLICANT**

**VERSUS**

**ATTORNEY GENERAL .....**  
**RESPONDENT**

**RULING:**

One JASON NYAKUNDI BOSIRE has brought an application under s.364 C.P.C. asking the court to revise the sentence of Senior Resident Magistrate in Kisii CMCCR No.132 of 2000. In that case one JOHN ICHARIA BOSIRE was charged with the offence of attempted murder c/s 220(a) Penal Code. He was found guilty, convicted and sentenced to three years imprisonment. He appealed in Kisii HCCRA No.37 of 2002. The High Court dismissed the appeal and upheld the conviction and confirmed the sentence.

The applicant depones he is a son of the appellant. He was the complainant. His father the accused then had laced some food with poison and gave it to him and his brother. His brother died. He deponed that the sentence of 3 years was very limit and the convict has vowed to kill him when he leave prison. S.220(a) of Penal Code provides that any person found guilty of attempted murder “is guilty of a felony and liable to life imprisonment.”

From the affidavits of the applicant and numerous correspondences it seems there is a misunderstanding of the section and he believes that the only sentence one can get when found guilty under that section is life imprisonment. That is not so.

Life imprisonment is the maximum sentence. The provisions gives discretion to the court to award any less appropriate sentence. The court takes into consideration the circumstances of each case and decide the sentence to award. In this case the court noted the offence was serious. It took into account the mitigation of the accused and his age and awarded 3 years imprisonment.

The sentence was not unlawful or irregular as the court has discretion to impose even a lesser sentence. I feel that the court properly directed itself when it decided on the sentence. 3 years may look few when one considers the maximum sentence is life imprisonment. However it is stated that the accused was 80 years old then. Three years imprisonment is not far from life imprisonment for a man of that age.

In affidavit filed on 30th March 2004 the applicant deponed that the accused was released on 12.12.03 through presidential amnesty and he seemed to challenge that release. This is not the right form to bring such a challenge. I am sure there were good reasons why the president decided to have the accused released.

Further applicant depones that upon release the accused wanted to kill him. If such a thing happened he should report to the relevant authorities to take appropriate action.

I find application has no merit. The same is dismissed.

**KABURU BAUNI**

**JUDGE**

Delivered on 15th May 2004. Mr. Nyakongo for applicant.

**KABURU BAUNI**

**JUDGE**