



REPUBLIC OF KENYA



**Auma v Republic (Criminal Appeal E104 of 2022)  
[2024] KEHC 4330 (KLR) (12 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4330 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL APPEAL E104 OF 2022  
RN NYAKUNDI, J  
APRIL 12, 2024**

**BETWEEN**

**MAUREEN AUMA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the conviction of 19th September, 2022 by the Senior Principal Magistrate, the Honorable R. Odenyo in Eldoret Law courts in Cr. No. E1410 of 2020)*

**JUDGMENT**

1. The appellant was charged with the offence of attempted murder contrary to section 220(a) of the [penal code](#). The particulars of the charge were that on 6<sup>th</sup> August, 2020 at Mtaa wa Rhoda estate at Burnt Forest trading center in Ainabkoi Sub-County within Uasin Gishu County, the appellant willingly and unlawfully attempted to cause the death of Kevin Muraguri by stabbing him with a knife and hacking him with a panga.
2. The appellant was convicted on the charge and sentenced to 10 years imprisonment.
3. Being dissatisfied with the said judgment the appellant lodged the present appeal only on sentence relying on the following grounds:
  - i. That she a first offender and thus seeks leniency.
  - ii. That she is remorseful and contrite at heart for the offence and she pleads for forgiveness from the court, victim and society at large.
  - iii. That for the years she has been in prison, she regrets her actions which almost took a life due to anger and lack of self-control. That given another chance, she will not make such a careless mistake.



- iv. That she was arrested at the age of 34 years and now she is 38 years old, a single mother of four children and one of them is very sick, suffering from a kidney disease.
4. The appellant filed submissions in support of her case and the said submissions have been considered. In them, she seeks that the court might consider an appropriate sentence given the circumstances of her case.
5. According to the appellant, she has served a substantive part of the sentence and as such she has learned her lesson and prays that she might be integrated back to the society. That she is remorseful, repentant and reformed. She stated that sentencing is at the sole discretion of this court and urged the court to consider the sentencing guidelines, 2016.
6. Unfortunately, at the time of drafting the judgment, the respondent had not filed his submissions.

### **Analysis and determination**

7. Having reviewed the trial Record, the grounds of appeal and the appellant's submissions, the main issue is to determine whether the instant appeal is a good candidate for sentence review. In such circumstances, this court is mandated to examine the appropriateness of the sentence meted.
8. The offence of attempted murder under section Section 220 (a) of the [Penal Code](#) provides as follows:

“Section 220 -Attempt to murder

Any person who—

  - (a) attempts unlawfully to cause the death of another; or
  - (b) with intent unlawfully to cause the death of another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life, is guilty of a felony and is liable to imprisonment for life.”
9. Ideally, the appellant would be serving life imprisonment but our justice system is now moving away from mandatory sentences. The appellant has advanced a number of mitigating factors, which I believe were considered during sentencing by the trial court.
10. In the “Muruatetu Case”, the Supreme Court outlined the following guidelines as being applicable when the Court was giving consideration to re-sentencing;

“(a) age of the offender;

(b) being a first offender;

(c) whether the offender pleaded guilty;

(d) character and record of the offender;

(e) commission of the offence in response to gender-based violence;

(f) remorsefulness of the offender;

(g) the possibility of reform and social re-adaptation of the offender;

(h) any other factor that the Court considers relevant.”



11. In considering the circumstances of the case and the objectives of sentencing in totality, I am persuaded that the 10 years sentence was appropriate and as such the sentence is upheld and the appeal fails. The appellant shall only benefit from the provisions of section 333(2) of the CPC. The sentence shall therefore run from the date of arrest i.e. 6<sup>th</sup> August, 2020

12. It is so ordered.

**DATED AND SIGNED AT ELDORET THIS 12<sup>TH</sup> DAY OF APRIL, 2024**

In the Presence of

Mr. Mugun for the State

Appellant

.....

**R. NYAKUNDI**

**JUDGE**

