



**Mbijiwe v Republic (Criminal Appeal E028 of 2022)
[2023] KEHC 2402 (KLR) (23 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2402 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL APPEAL E028 OF 2022
TW CHERERE, J
MARCH 23, 2023**

BETWEEN

GEOFFREY MWIRIGI MBIJIWE APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal against Conviction and Sentence in Githongo Criminal
Case 462 of 2020 by Hon. S. Ndegwa (SPM) on 17th February, 2022)*

JUDGMENT

The Trial

1. Geoffrey Mwirigi (Appellant) was charged with the offence of attempted murder contrary to section 220(a) of the *Penal Code* Cap 63 Laws of Kenya (the Act) in that on 10th August, 2020, he attempted to cause the death of Douglas Muriungi Mbijiwe by stabbing him on the stomach.

The prosecution's case

2. The prosecution case as narrated by the complainant was on 02nd August, 2020, Appellant who is his step-brother found him and others in a meeting at the house of one Jadiel Muthuri who had died and without any provocation whipped a knife, stabbed him on the stomach and ran away leaving the knife lodged in complainant's stomach. He stated he was treated at Consolata Hospital Nkubu as an inpatient for 13 years within which time he underwent an operation.
3. The incident was witnessed by Moses Kirimi and Duncan Gatobu who were in the meeting with the complainant and they stated that the attack was unprovoked.
4. Dr. Samuel Mutegi stated that complainant was received at Consolata Hospital Nkubu with a right upper sided penetrating stab wound. That due to the seriousness of the injury, complainant who was in



critical condition was admitted and placed on oxygen. The doctor further stated that an x-ray revealed blood in the abdominal space and a laparotomy is a surgical incision (cut) into the abdominal cavity was conducted. The doctor tendered complainant's P3 form PEXH. 1 which reveals that the injuries were assessed as grievous harm and the discharge summary dated 22nd August, 2020 as PEXH. 2. Appellant was subsequently arrested and charged.

Defence case

5. Appellant denied assaulting the complainant. He stated that on the material date, complainant and others attempted to evict him but they did not succeed. That later in the evening of the same day, he was attacked by a gang of 7 men and he ran into the house where complainant and others were and he saw complainant being stabbed in the melee.
6. The trial court considered the case in its totality and rejected the defence. Having found that Appellant was not a first offender having previously been convicted for assault in Githongo Criminal case no. 271 of 2014 and was sentenced to 2 years' probation, the court sentenced him to serve 20 years' imprisonment.

The Appeal

7. Appellant challenges the sentence on the grounds that he has served over 3 years and has reformed.
8. When the appeal came up for hearing on 23rd February, 2023, Appellant indicated that he wished to rely on his written submissions filed on 22nd February, 2023 whereas Mr. Masila, learned state Counsel indicated that the state was relying on the evidence on record.

Analysis and Determination

9. On first appeal from a conviction by a judge or magistrate, the appellant is entitled to have the appellate court's own consideration and view of the evidence as a whole and its own decision thereon. The court has a duty to rehear the case and reconsider the material before the judge or magistrate with such materials as it may have decided to admit. (See the Court of Appeal decision in *Kariuki Karanja vs Republic* [1986] KLR 190).
10. Section 220 of the Act provides as follows: -
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.
11. The trial magistrate in her discretion sentenced Appellant to 20 years' imprisonment.
12. In considering whether this court can interfere with the discretion of the trial magistrate, I have been guided by the Court of Appeal decision in *Bernard Kimani Gacheru v Republic* [2002] eKLR where the court stated thus:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with the sentence unless, that sentence is manifestly excessive in the circumstances of the case,



or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist. (See also *Wanjema v. Republic* [1971] E.A.493.”

13. In *Abamad Abolfathi Mohammed & another v Republic* [2018] eKLR, the Court of Appeal held at Page 25 of its judgment as follows:

“As what is challenged in this appeal regarding sentence is essentially the exercise of discretion, as a principle this Court will normally not interfere with exercise of discretion by the court appealed from unless it is demonstrated that the court acted on wrong principle, ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive.

14. Considering the extent of the injuries inflicted on the complainant and the fact that Appellant had been convicted of a similar offence of causing bodily harm, I find that no law, fact or facts exist that would warrant this court to interfere with the sentence imposed by the trial court.
15. For the foregoing reasons, I dismiss the appeal and uphold the sentence of 20 years’ imprisonment imposed by the trial court. The sentence shall commence from 10th August, 2020 when Appellant was arrested.

DELIVERED AT MERU THIS 23RD DAY OF MARCH 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

Appellant - Present in person

For the State - Ms.Rita (PPC)

