



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAIVASHA  
(CORAM: R. MWONGO, J)

COURT CRIMINAL APPEAL NO. E008 OF 2021

GIDEON GITHUA WANGECHI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against conviction and sentence from the judgment of Hon R. L. Musiega, RM, in SPMCRC No E463 of 2016, Engineer)

JUDGMENT

1. This matter came originally as an urgent application for bail pending appeal on 16<sup>th</sup> March, 2021. The court ordered service of the application.
2. At the subsequent hearing, the state indicated it had no objection to the bail application and bail was granted at Kshs 30,000/= with one surety of like amount.
3. It was also noted that the applicant was sentenced to 3 years without option of a fine for perjury contrary to **Section 108 (1)** as read with **Section 110** of the **Penal Code**.
4. On inquiry by the court, the state did not oppose a sentence review and the court ordered the applicant to file mitigation grounds; and the Probation Officer to file a Sentence Review Report.
5. The applicant's written mitigation was filed on 22<sup>nd</sup> April, 2021 whilst the Probation Officer's Report was filed on 24<sup>th</sup> May 2021.
6. In his mitigation the applicant stated: that he is remorseful and apologises to the court for the offence; that he is the sole breadwinner of his family which consists of his wife who is unwell and unemployed, and one small child; both of whom depend solely on him; that he is a law abiding citizen who pleaded guilty at the earliest opportunity and co-operated with the police and prosecution in the entire process; that he has no previous criminal record; and that he committed the offence of perjury in the attempt to have the matter withdrawn and resolved outside court.
7. The Probation Officer's Report indicates that the offender is the child of a singer mother; that he has never known his biological father; that he has three siblings who are still in school; and that other who are subsistence farmers or masons. The Report further indicates that in addition to his 1 ½ year old daughter, his young wife is expecting their second child; that he has the support of grandfather; and that the community knows the family well and he has not previous record of misconduct.
8. The Probation Report concludes and recommends as follows:

**“.....The appellant is genuinely remorseful. He pleads for the court's leniency and promises to comply with all the court orders. The community has a very positive attitude towards the appellant.**

**The appellant is a youthful offender. He also has a skill set from which he earns a living to support his family. He is therefore positively engaged and a resourceful in the community.**

**The appellant has the support of his maternal grandfather. He is an active church follower and the church leadership is involved in mentoring him. They have promised to cooperate in his rehabilitation and give him the necessary support to**

**ensure that he continues being a law abiding citizen moving forward.**

**A non-custodial sentence will be beneficial to the appellant. He will be duly supervised. Intervention will be put in place to ensure that he does not re-offend.**

**Your honor, in view of the above findings, I find the appellant fit for a non-custodial sentence. I therefore recommend that he is given a chance to serve a one year probation sentence.”**

9. I have also perused the lower court record. It discloses that the offender impersonated the complainant in the lower court proceedings and purported to withdraw the case. When the court looked at his identification after he had been sworn in, the court realised that the name of the complainant was different from that of the offender purporting to withdraw the complaint. He was arrested and charged with perjury. It was later discovered that the actual complainant had in fact written to the court seeking to withdraw the case.

10. Taking all the foregoing matters into account, I find that the sentence imposed of 3 years imprisonment without option of a fine was harsh.

11. The objects of sentencing anticipate that the punishment shall be as proportioned to the offence as possible and shall take into account the circumstances and social environment of the offender. I believe the arrest, prosecution and time spent in remand has taught the offender a lifelong lesson.

12. In light of the state’s position, and taking into account the sentence already served, the mitigating circumstances and the Probation Officer’s Report, I review the sentence and hereby mete a non-custodial sentence as follows:

- a. The applicant is hereby sentenced to one (1) year non-custodial sentence to be served in a probationary program with immediate effect.
- b. The Probation Officer shall prepare and avail an appropriate probation programme to be served by the offender which shall include learning or teaching on the need for truthfulness and integrity in life; as part of his rehabilitation. Such programme may be demanded by the court.
- c. The offender shall also forthwith pay a fine of Kshs 20,000/= (Twenty thousand).

**Administrative directions**

13. Due to the current inhibitions on movement nationally, and in keeping with social distancing requirements decreed by the state due to the Corona-virus pandemic, this Judgment has been rendered through Teams tele-conference with the consent of the parties noted hereunder, who were also able to participate in the conference. Accordingly, a signed copy of this judgment shall be scanned and availed to the parties and relevant authorities as evidence of the delivery thereof, with the High Court seal duly affixed thereon by the Executive Officer, Naivasha.

14. A printout of the parties’ written consent to the delivery of this judgment shall be retained as part of the record of the Court.

15. Orders accordingly.

**DATED AND DELIVERED IN NAIVASHA BY TELECONFERENCE THIS 20<sup>TH</sup> DAY OF SEPTEMBER, 2021**

**R. MWONGO**

**JUDGE**

Attendance list at video/teleconference:

- 1. Ms Maingi for the State
- 2. Mr. Wainaina for the Appellant
- 3. Gideon Gathua Wangechi - Present in court

4. Court Assistant – Quinter Ogutu