



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAHURURU

CRIMINAL APPEAL NO.46 OF 2018

(Appeal Originating from Nyahururu CM's Court Cr.No.1810 of 2016 by: Hon. O. Momanyi – S.R.M.)

IBRAHIM MAINA GICHUGI.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant, **Ibrahim Maina Gichugi** was charged with the offence of attempted murder contrary to Section 220(A) of the Penal Code.

The particulars of the charge are that on 1/8/2016 at Wiyumiririe Trading Centre within Laikipia County, attempted to cause the death of Zipporah Wanjugu Kinyua by cutting her several times on the head and hands using a panga.

In the alternative, he faced a charge of grievous harm contrary to Section 234 of the Penal Code.

It was alleged that on 1/8/2016 at Wiyumiririe Trading Centre, in Laikipia County unlawfully did grievous harm to Zipporah Wanjugu Kinyua.

After a full trial, he was convicted of the offence of grievous harm and was sentenced to serve 20 years imprisonment.

The appellant was dissatisfied with both the conviction and sentence following which he filed this appeal dated 7/6/2018.

When the appellant appeared in court for the hearing of his appeal, he intimated to the court that he did not wish to proceed with the appeal on conviction but only sentence. In his petition, he stated that the sentence was harsh and excessive; that the court failed to consider the fact that he was a first offender and failed to get a presentence report; that he suffers from back problems and is suffering in prison and prays that the sentence be reduced.

Mr. Mwangi, learned counsel for the State observed that the charge was defective because the appellant was charged with two offences which called for similar sentences that is life imprisonment, that attempted murder and grievous harm. He however said that there is no mistrial because the appellant was aware of the charge, that witnesses testified, were cross-examined and the court convicted the appellant for the offence of grievous harm.

Ordinarily, an alternative charge is preferred where the facts would disclose a lesser charge than the main charge. In this case it was unnecessary to prefer a charge of grievous harm an alternative charge to attempted murder. However there was no miscarriage of justice.

The complainant, who was he appellant's estranged wife, told the court that the appellant suddenly attacked him when she was picking up the child. He hit her on the back of the head, then hit her with a panga. After she was hit again, she became unconscious and came to when at Nyahururu in Hospital. She sustained injuries, 3 cut wounds on the head, neck, legs, hand, right hand and the elbow.

PW3 Samuel Kariuki Njeri a Clinical Officer, received the complainant at the Clinic; PW3 said that she was bleeding profusely, had multiple panga cuts on the head and was semiconscious; that PW1 had injuries on the frontal part, temporal part, occipital area, two cuts on the right hand and she was dizzy; that the patient was confused. PW3 produced the treatment notes and P3 form. The following injuries were noted:

Several cuts on the head and neck, fractured left ulna, injuries to bones of the head, torn collateral ligament, drooling of saliva and facial drooping as a sign of facial paralysis. When seen the patient was undergoing physiotherapy.

This court takes into account the fact that the appellant was treated as a first offender. He was not remorseful despite the fact that his actions

were uncalled for. He descended on his wife who was defenceless, carrying a baby, whereas he was armed with a panga. The complainant suffered very serious injuries and I echo the words of the magistrate who found the appellant's actions as beastly and barbaric. There is no reason why this court should exercise its discretion to accord him leniency. His allegation that he has back problems was not supported by any evidence. The offence for which he was charged carries a maximum sentence of life imprisonment. The appellant was only handed 20 years imprisonment which in my view, is fair.

He is a violent man and should be kept away from society for some time. He is lucky he only got twenty years imprisonment. The court declines to interfere with the sentence.

The appeal is hereby dismissed.

Dated, Signed and Delivered at NYAHURURU this 22nd day of July, 2019.

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R.P.V. Wendoh

JUDGE

PRESENT:

Ms. Rugut for State

Soi – Court Assistant

Appellant - present