



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCRA NO. 262 OF 2017

MUSYOKI MUTING'A.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal from original sentence TAWA SRMCRC

No. 181 of 2017 before Hon. N.M Kinyua SRM on 10/102017.

JUDGMENT

1. The Appellant was charged with offence of grievous harm contrary to Section 234 of the Penal Code.

Particulars being that on **13/03/2017** at Ndueni village, Nzeveni location in Mbooni West district, Makueni County unlawfully did grievous harm to **Kivuva King'oo Peter**.

2. He pleaded guilty and he was convicted on his own plea.

3. The facts were read to him as follows: -

On 13/03/2017 at around 6:30 pm, the complainant Kivuva King'oo from Ndueni village was from the market when he was waylaid by the accused person herein who was armed with a panga. He attacked the complainant with a panga and he sustained severe throat injuries. His father raised alarm but the accused disappeared. The complainant was escorted to Mbooni sub-district hospital where he was treated and subsequently transferred to K.N.H for further treatment. The complainant was issued with a P3 form at Mbooni police station which was filled at Mbooni sub-district hospital. Investigations commenced and he was later traced and arrested, charges were then preferred against him. The P3 form is in court. It is dated 04/10/2017, filled by Dr. Kakundi, produced as exhibit 1. Treatment card dated 09/03/2017 as exhibit 2.

4. When asked to respond he stated the facts were correct. After plea of guilty was entered, he was given an opportunity to mitigate but just stated ;

“the complainant took away my iron sheets. I cut him”

5. On sentence the trial court stated that: -

“The accused person has been convicted in his own plea of guilty. The exhibits clearly show that the accused sliced the complainant's neck. Even at this time the accused person does not show any remorse for the offence that he committed. Therefore, accused person is hereby sentenced to serve life imprisonment in accordance with the law”.

6. He was thus sentenced to serve life imprisonment. Being aggrieved by the aforesaid decision, he lodged an appeal and set out seven grounds of appeal. Later he amended the same and reduced them to five grounds namely: -

i. That the medical evidence which the trial magistrate acknowledged was obscure, indeterminate and professionally dysfunctional.

ii. That the trial magistrate erred in law and facts by convicting him despite inconsistent insufficient as well as contradicting evidence.

iii. ***That the trial magistrate erred in law and facts by not taking into consideration that he was not conversant and aware of the criminal procedure process and subsequent consequences of pleading guilty before convicting him.***

iv. ***That the trial magistrate erred in law and facts by not considering the mind status of the Appellant during the trial process, which is contrary to Section 173 of the Evidence Act Cap 80 Laws of Kenya.***

v. ***That he was threatened and forced on gun point by the arresting officer to plead guilty to the alleged offence.***

7. The appellant complaint seems to be principally that the admission was extracted from him through the use of force. However when he appeared in court for plea he never complained to court nor give details during hearing of the appeal as to who and when he was forced at gun point to plead guilty. This court finds the same complaint to be an afterthought.

8. The records are clear that the Appellant pleaded guilty voluntarily and even justified the act that the complainant had taken his iron sheet thus he cut him.

9. He did not even mitigate other than justifying the cutting of the complainant.

10. Thus the trial court found that he was not remorseful. The provision under which he was charged provides a maximum penalty of life imprisonment.

11. On 01/10/2018, the court ordered for a probation report to be prepared and filed in court. The same was filed on 30/10/2018. Same reported that Appellant had no adverse reports against him.

12. There was no previous criminal record on the Appellant's side.

13. Under the **Judiciary Sentencing Policy Guidelines**, some mitigating factors are;

Mitigating Circumstances

23.8 Mitigating circumstances warrant a more lenient penalty than would be ordinarily

Imposed in their absence. They include:

- **A great degree of provocation.**
- **Being a first offender.**
- **Pleading guilty at the earliest opportunity.....**

Inter alia.

14. The court thus is obligated when sentencing to consider among the above factors before awarding appellant the maximum sentence and reduce same accordingly.

15. The court thus cannot award a maximum sentence where above factors are disclosed. Thus this court will affirm conviction but interfere with sentence.

16. Thus the court makes the following orders: -

i. The conviction is affirmed,

ii. The life sentence is set aside and substituted with a sentence of 20 years.

SIGNED, DATED AND DELIVERED THIS 12TH DAY OF JULY 2019, IN OPEN COURT.

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C. KARIUKI

JUDGE