



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAPENGURIA

CRIMINAL APPEAL NUMBER 12 OF 2017

CORAM: JUSTICE S.M GITHINJI

(From original conviction and sentence in criminal

case number 1636 of 2016 of the Principal

Magistrate's Court at Kapenguria)

STEPHEN KIBOR.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

In the lower court, Stephen Kibor, the appellant herein, was charged, tried, convicted and sentenced for an offence of Attempted Murder, ***Contrary to Section 220(a) of the Penal Code.***

The particulars of this offence are that on the 20th day of October, 2016 at Murkwijit Area, within West Pokot County, the appellant with intent to cause unlawfully the death of David Kibereng, the appellant cut him on the neck using a panga.

The prosecution case is that the appellant and the complainant, who is PW-1 in this case, are brothers born of the same father and mother. On 20th October, 2016 at 6.30am PW-1 was at home to build their mum a home. He went to change clothes and met with the appellant. He saluted the appellant who said he was going to guard the animals. The appellant told him he had workers to help him build their mother's house. While the complainant was bending to change clothes, the appellant pounced on him while armed with a panga and cut him on the back of the head, on the forehead after he had turned to face him, ribs and on the left leg. The complainant fell down unconscious as a result. A child of the appellant known as C, who was aged 6 years, screamed for help. PW-2, a village elder at Murkwijit was attracted to the scene by the said screams. She found the appellant armed with two pangas attacking the complainant who was already down. She ordered the appellant to stop. The appellant charged towards her, she screamed attracting many neighbours. The appellant retreated to his place. PW-2 tried to do first aid to the complainant who was later rushed to hospital by some of the present neighbours. She then led young men to the appellant's place. When the appellant saw them he turned violent. She instructed the men to tie him up. He was subdued and taken to the Police Station at Kapenguria. PW-4 re-arrested him. He then visited the complainant at Kapenguria County Referral Hospital. He noted of the injuries he had. He kept his blood stained clothes as exhibits as well as the panga which was recovered at the scene. When the complainant was later discharged, he recorded a statement with the police. A P-3 form was issued and was filled on 21.10.2016. It shows that he had cut wounds on the head, face and occipital area. The chest was painful and swollen. There was a wound on the back and left knee joint. The injuries were about 2 days old and were caused by a sharp object. The degrees of injuries was assessed as maim.

The appellant was then charged. The clothes and the panga, as well as the P-3 were produced in court as exhibits. The appellant brief defence is that the complainant herein is his brother. On 20.10.2016 he was working at Hon. Murgor's place. When he finished work he proceeded to the centre where he found police and members of the public. The members of public upon seeing him did arrest him and handed him over to the police officers. He was taken to the police station and charged with the present offence, of which he denied.

The trial court evaluated the evidence and found him guilty. He was consequently convicted and sentenced to 14 years imprisonment.

Discontented with the said conviction and sentence, he appealed to this court against both on the grounds that:-

1. **He pleaded not guilty during trial.**
2. **He was not supplied with witness statements**
3. **The investigating officer did not carry out comprehensive investigations and did not visit the scene.**
4. **His defence was rejected without cogent reasons given.**
5. **The evidence was false and a collusion of PW-2 and the wife of PW-1 so as to inherit the ancestral land.**
6. **The evidence was by family members.**
7. **The case was not proved to the required standard in law.**

The appellant in his written submissions first stated that he had reformed in prison and disclosed how. He did not address his grounds of appeal as would have been expected. He **“mitigated.**

The state on their part opposed the appeal. They urged the court to enhance the sentence from 14 years imprisonment to life imprisonment as the offence carried the stated maximum. They averred that the appellant was well recognized by his own brother who could not have made a mistake of him and PW-2 who found the appellant in the act, offered **“smoking gun”** evidence. The injuries inflicted on the complainant and areas where inflicted leaves no doubt that the motive was to kill him. The defence is of mere denial and weak; I am urged to dismiss the appeal and sentence the appellant to life imprisonment.

I have re-evaluated the entire evidence, lower court decision, grounds of appeal and submissions. The evidence of PW-1 and PW-2 leaves no doubt that it is the appellant who attacked his own brother, out of no apparent reason, with a panga, causing him injuries of which the medical officer who filled the P-3 form classified as **“maim.”** PW-2, the village elder is the one who rescued the complainant who was already on the ground and the appellant was continuing to attack him. The choice of weapon, of which is a panga, and the multiple cut injuries inflicted on the complainant, mostly on the head, leaves no doubt that the appellant was out to kill his brother. He appears aware he was properly convicted and sentenced and that is why he **“mitigated”** in his submissions, in an attempt to get a lenient sentence. However, this is a serious offence where someone’s life was almost lost for no good reason. The lower court was lenient in sentencing him to 14 years for an offence which carries a maximum of life imprisonment. Since the sentence passed is lawful and not over lenient given the circumstances, I’ll not interfere with it in the manner urged by the state.

The bottom line is that the appeal lacks merit and is hereby dismissed.

Judgment read and signed in open court in the presence of Ms. Kiptoo, the prosecutor and the appellant this 6th day of March, 2018.

S. M. GITHINJI

JUDGE

6.3.2018