



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KABARNET**

**HCCRA NO. 186 OF 2017**

*From original conviction and sentence in Criminal Case Number 845 of 2016 at PM'S Court Kabarnet*

**KANYAKERA SOMOT.....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

*(An appeal against conviction and sentence vide Criminal Case no 845 of 2016 at PM's Court Kabarnet imposed by Hon E.M Ayuka (RM) in a judgment dated and delivered on 14<sup>th</sup> March 2015)*

**JUDGMENT**

1. The appellant does not challenge his conviction for the offences of threat to kill and for attempted escape from lawful custody contrary respectively to sections 223(1) and 36 of the penal Code for which he was on 14<sup>th</sup> March 2017 sentenced to imprisonment for 3years and 6 months both sentences running concurrently. He only seeks a reduction of the sentence pleading for leniency and pledging to lead a changed life without crime.

2. Upon the court's request for a presentence report, the Probation Officer, Baringo has filed a Report dated 23.7. 18 in which, as material, the attitude of the offender, the Community and the victim's family are set out as follows:

**"REPUBLIC OF KENYA**

**PROBATION SERVICE**

**PROBATION OFICER'S REPORT**

**KAB/PR.1/HC/34**

**NAME:** Kanyakera Somot **AGE:** 45 years **COURT:** High court- Kabarnet

**TRIBE/CLAN:** Pokot

**COURT FILE NO:** HCCRA 186/17

**SUB-COUNTY:** East pokot

**POLICE STATION:**

**NATIONALITY:** Kenyan

**P.C.R. CASE NO:-**

**LOCATION:** Kositei

**CHIEF:** Joshua Akeno

**SUB-LOCATION:** SERETION

**ASST. CHIEF:** Yohana Tumbo

**VILLAGE:** Kuroton

**VILLAGE ELDER:**

**CHARGE:** Threatening to kill c/s 223(1) of the penal code

**PENAL CODE SEC:** 223(1)

**CIRCUMSTANCES OF THE OFFENCE**

The offender arrived at his father's homestead and started shouting at him accusing him of selling his livestock. He turned violent towards him that made his younger brother to step-in to disarm him.

His father ran away and informed his neighbor who contacted the area chief and together with the Administration police officers came to arrest him and aforementioned charges were preferred against him. He was subsequently proved guilty, convicted and sentenced to 3 years imprisonment on 14/03/17.

**APPELLANT'S ATTITUDE AND IMPACT OF IMPRISONMENT**

The appellant takes responsibility for the offence he committed. He attributed his tribulations to alcoholism and promises to shun its consumption to avert further conflict with the law. The period of confinement seems to have instilled in him the respect for the rule of law and therefore pleads to be granted a chance to complete his sentence within the community.

**COMMUNITY ATTITUDE**

The local administration comprising of the chief Silale location (0724789956) described the appellant in a negative light terming him an alcohol and a troublesome person who has been a threat to his parents. The neighborhood also described the appellant as an economic threat and a serial offender known to go underground upon commission of an offence. In the opinion of these significant others, the appellant does not merit a community-based sentence and therefore ought to complete his sentence in custody in order to tame his anti-social conduct.

**VICTIM'S ATTITUDE**

The complainant who is the appellant's father is skeptical about the appellant has really reformed and fears for his life. He feels that the period served is not retributive enough and is of the opinion that the appellant ought to complete his sentence in custody. He is therefore opposed to his release for post penal rehabilitation. One of the victim's family members one Peter Salemoi (07157-57359) who is the assistant chief Napukut sub-location echoed similar sentiments stating that the appellant's parents are enjoying a sigh of relief for the period he has been in custody and therefore still needs time to heal.

**CONCLUSION**

Your lordship, the appellant before this honorable court has a tainted past having had an acrimonious relationship with his parents and siblings over livestock. He had been assaulting his parents for refusing to give in to his demand for a share of the family's animals. Due to his reckless and extravagant behavior he has sold all his share of the skeptical on state of his prison rehabilitation and fears for his life. He stated that he still needs time to heal and has opposed his release for post penal rehabilitation.

The local administration equally replicated similar sentiments describing the appellant as a person who is difficult to manage having been a subject of ADR mechanism for sometime with no sign of reform. They are of the view that the appellant completes his sentence in custody.

**RECOMMENDATION**

Going by the negative sentiments expressed by the victim, immediate family members and the local administration, it is our opinion that in the absence of reconciliation which is paramount for the success of any community-based sentence, the appellant's prospect for further reform within the community is low. His case may therefore be dealt with otherwise.

**Kiprono M.K.**

**Probation Officer**

**Baringo Sub County**

**Date: 23/07/2018"**

3. I have considered that the object of Community service is not just that the offender is punished while performing some task beneficial to the community. It also has public benefit of deterrence for the members of the community who witness the offender's employment in CSO as a form of punishment. I think that to employ the offer herein in CSO at a local facility to be determined by the Probation Officers will deliver a community benefit by way of deterrence as well as appropriately punish the offender for his offence.

4. The offence of threat, or indeed attempt to kill which may sometimes accompany a threat, is a serious breach of the peace of a community. However, noting that the appellant herein has served more than half of the actual sentence of 3 years imposed by the trial court on 14<sup>th</sup> March 2017, and he being due for release in **less than 6 months** with remission, I consider that it would do well for the members of the community to learn of undesirable consequences of the offence by seeing the offender work on Community Service Order (CSO) at a neighbourhood public institution. The visibility of the punishment will serve to sensitize the community against violence and threats of

violence so common in this region.

5. The negative sentiments of the victim and his relative assistant Chief are understandable, but weighed against the reported remorse and reform of the appellant and the principal object of punishment to reform an offender and deter others, such subjective concerns of the victim must give way to the broader interest of the justice system to prevent crime by deterring potential offenders while rehabilitating the present offender. The court notes the familial nature of the offence, and considers it, noble duty to help achieve reconciliation between the offender and his family members with whom he must live after completion of his sentence. Significantly, even if the court were to direct that the appellant completes his imprisonment term, the appellant would be out of Prison so shortly hereafter when, with remission, he is released in less than six months upon completion of his 3 year sentence.

6. I would, accordingly, direct that the probation officer shall examine and recommend a neighbourhood public institution at which the appellant may be engaged for the remainder of his sentence term. Mention for further directions within 7 days.

***Order accordingly.***

**DATED AND DELIVERED THIS 8<sup>TH</sup> DAY OF OCTOBER 2018.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Appellant in person.

Ms. Macharia, Ass DPP for the Respondent.