



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MIGORI

CRIMINAL APPEAL NO. 22 OF 2017

PETER ODHIAMBO MISIRA.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal on sentence arising from the conviction and sentence

by Hon. R. Odenyo, Senior Principal Magistrate in Migori

Chief Magistrate's Criminal Cases No. 363 of 2015

delivered on 28/07/2017)

JUDGMENT

1. The Appellant herein, **Peter Odhiambo Misira**, was charged with the offence of threatening to kill contrary to **Section 223(1)** of the **Penal Code**. He denied the offence and a trial was held where he was found guilty as charged, convicted and sentenced to a term of seven years in prison after the court considered a Pre-Sentence Report whose contents were not favourable for a non-custodial sentence.
2. The Appellant appealed against the sentence claiming that the sentence was very harsh and prayed that he be considered for either an acquittal or a non-custodial sentence.
3. The Court in the case of **Wanjema v. Republic (1971) EA 493** laid down the general principles upon which the first appellate Court may act on when dealing with an appeal on sentence. An appellate Court can only interfere with the sentence imposed by the trial Court if it is satisfied that in arriving at the sentence the trial Court did not consider a relevant fact or that it took into account an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the appellate Court must not lose sight of the fact that in sentencing, the trial Court exercised discretion and if the discretion is exercised judicially and not capriciously, the appellate Court should be slow to interfere with that discretion.
4. I have considered all the issues in this matter and note that the sentencing court took into account all the relevant issues including calling for a Pre-Sentence Report. The maximum sentence on conviction for the offence of threatening to kill is life imprisonment. Looking at the circumstances of this case and the position of the victim who is a wife to the Appellant, the family members and the community at large, the sentence of 7 years in prison cannot be described as harsh in any manner whatsoever.
5. The appeal is hence unmeritorious and is hereby dismissed.
6. As I come to the end of this judgment I must apologize to the parties for the late delivery of this decision which was caused by this Court's engagement in the hearing and determination of election petition appeals in the month of July and the August recess which followed soon thereafter.
7. Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 4th day of October, 2018.

A. C. MRIMA

JUDGE

Judgment delivered in open Court and in the presence of: -

Peter Odhiambo Misira the Appellant in person.

Joseph Kimanthi Senior Principal Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the Respondent.

Evelyne Nyauke – Court Assistant