



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL 139 OF 2011**

**BEATRICE ANYANGO OTIENO .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

(From original conviction and sentence in Criminal Case number 649 of 2011 of the Senior Resident Magistrate's Court at Bondo – M. M. Nafula – MD II PRPF)

**JUDGMENT**

The appellant was charged with the offence of threats by means of a licensed communication system contrary to Section 29 (A) of the Communication (Amendment) Act Number 1 of 2009.

The particulars of the offence are that on the 2<sup>nd</sup> day of September 2011 at Ramba Village in Rarieda District in Siaya County sent a message through a licensed telecommunication namely Safaricom Mobile Phone number **07181468464** to mobile number **0722694881** belonging to **Francis Otieno Obongo** using threats to wit “**send this amount of money One Hundred and Fifty Thousand but we have 30 thousand from her we are kidnappers and you will get your wife** “ a matter that could cause fear and torment to the said Francis Otieno Obongo.

On her own plea of guilty she was sentenced to three (3) years imprisonment.

She then filed this appeal citing the following grounds:-

- 1. That I pray for leniency.**
- 2. That I pray to be treated as a first offender.**
- 3. That the appellant is a sick lady suffering from epilepsy and is getting it very difficult while serving the sentence inside Prison. In addition to that I have a young boy who is still attending primary school level in my rural home, he is staying with my mother who is a cripple, now my long-term imprisonment is a frontier to them, thus then becoming a burden to the rest of the community since my father was not in good forms with his relatives.**
- 4. I pray that may this honourable court consider my mitigations and give me a second chance since I believe in the wise saying that once bitten twice shy and promise to be a good citizen.**

When this matter came up for hearing the learned State Counsel **Mr. Meroka** conceded that although she pleaded guilty the sentence meted by the trial court was not in line with the provisions of the Act. He urges me to consider allowing the appeal only in line with the Act.

I have perused Section 29 and of the Kenya Information and Communication Act Chapter 411 A of the Laws of Kenya. The conviction provides therein is” a fine not exceeding fifty thousand shillings or imprisonment for a term not exceeding three months or both”

In this case the trial court sentence the appellant to three years imprisonment. This was clearly wrong and not within the provision of the law.

I shall therefore proceed to allow the appeal by having the appellant released forthwith unless lawfully held.

**Dated, signed and delivered at Kisumu this 12<sup>th</sup> day of July 2012**

**H. K. CHEMITEI  
JUDGE**

**In the presence of:**

Meroka State Counsel

In person Appellant

*HKC/ao*