

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. E105 OF 2025
HUMPHREY WAKULIMA
ARETA.....APPELLANT

V E R S U S

REPUBLIC
...RESPONDENT

(Being an appeal against the conviction and sentence delivered by Hon. M. Maroro (P.M) on 16TH May 2023 at Kibera High Court Criminal Case No. 27 of 2020, Republic vs. Humphrey Wakulima Areta)

JUDGEMENT

1. The appellant was charged with the offence of Attempted Murder contrary to Section 220 (b) of the Penal Code. Particulars were that on the 1st day of December, 2019, at Makina in Kibera Sub-county of Nairobi County, he attempted to unlawfully cause the death of Caroline Muhonja by stabbing her severally using a knife. He was sentenced to serve 13 years' imprisonment.
2. Being aggrieved the appellant filed this appeal and relied on 22 various grounds as contained in his petition of appeal dated 21st October 2021. These grounds are: The appellant challenges the Trial Court's findings on several grounds, arguing that the Magistrate erred in law and fact by denying the appellant's constitutional right to present additional evidence, failing to ensure a fair trial, and improperly shifting the burden of proof.
3. The appellant contends that the prosecution did not establish its case beyond reasonable doubt, ignored inconsistencies in the respondent's evidence, and failed to recognize that the actions of the first victim provoked the appellant. The appellant also disputes the conviction for attempted murder and unlawful

wounding, citing issues such as the handling of witness testimonies, misinterpretation of the intent and circumstances of the shooting, and the Magistrate's alleged bias and hostility. Additionally, the appellant points out that he was unfit for custodial sentencing due to illness.

4. This being a first appellate court, this court is required to conduct a fresh and exhaustive evaluation of all the evidence tendered in the lower court and to come to an independent conclusion as to whether or not to uphold the conviction and sentence. However, as I do so, I do bear in mind that I did not have the advantage (as the learned trial magistrate had) of hearing and seeing the witnesses and I give allowance for that. (See **Okeno vs Republic 1972 (EA) 32**).
5. The prosecution a total of three (3) witnesses in support of their case. PW1 Caroline Muhonja gave her sworn testimony that on 1/12/2019, she went to buy supper when she ran into the appellant, who was his former boyfriend. He wanted to talk, but she refused and went and bought her supper. When she returned, she met him again, and he had a knife and started stabbing her from behind. They had separated for about three months. The appellant stabbed her seven times, and she had to be admitted for one month at Kenyatta National Hospital.
6. During cross-examination, she states she was stabbed by the appellant seven times, and when she screamed for help, people came, and he ran away.
7. PW2, Hassan Ali, gave a sworn testimony that on 1/12/2019, he was in the house with his friends when they heard screams. They came out and found the appellant beating PW1, and the appellant ran away. PW2 called the brother of PW1 and took her to the hospital. He further states that he knew the appellant from before, hence was able to recognize him in sufficient light.

8. During cross-examination, he states that the three of his friends came out of the house and witnessed PW1 getting stabbed by the appellant. He also added that there was little light, which enabled him to recognize the appellant.
9. PW3 CPL Lawrence Mutiso the investigating officer summarised the prosecution case. He told the court that the appellant stabbed the complainant seven times.
10. The appeal was canvassed by way of written submissions which have been duly considered and there is no need to rehash them.
11. Section 220 (a) of the Penal Code provides for the offence of attempted murder as well as the sentence upon conviction:

“attempts unlawfully to cause the death of another is guilty of a felony and is liable to imprisonment for life.”
12. To sustain a charge of attempted murder, the evidence must show that there was a specific intent to unlawfully cause the death of another. In **Cheruiyot Vs Republic (1976 - 1985) EA 47** it was emphasized that

“an essential ingredient of an attempt to commit an offence is a specific intention to commit that offence. If the charge is one of attempted murder, the principal ingredient and the essence of the crime is the deliberate intent to murder. It must be shown that the accused person had a positive intention to unlawfully cause death and that intention must be manifested by an overt act”.
13. It was the prosecution’s case that the complainant, PW1, was going to buy supper when he met the appellant, her former boyfriend. He wanted to talk, but PW1 refused. He then waited for her return and started stabbing her from behind using a knife.

14. This was corroborated by PW2, who witnessed the incident and went ahead to call PW1's brother to take her to the hospital. This satisfies the principal ingredient and the essence of the crime is to murder.
15. In the case of **Abdi Ali Bare v Republic (2015) EKLR**. It was held that the actus reus of that offence of attempted murder was a challenge. The act to constitute attempted murder must be sufficiently proximate to murder to be properly described as an attempt to commit murder.
16. The fact that the appellant had a knife and stabbed the complainant seven times in itself its prove that the appellant intended to harm. The appellant was past the preparation stage to execute his intentions.
17. The complainant sustained serious injuries, which led to being admitted to Kenyatta National Hospital for a month while undergoing treatment. Even though the P3 and medical treatment notes were marked but not produced. Notwithstanding the evidence by the prosecution witnesses were overwhelming pointed to the appellant having committed the said offence.
18. The medical officer who was to produce the P3 form and treatment reports died before testifying, and there was a delay in replacing the police surgeon. Notwithstanding this setback, the complainant and an eyewitness testified, and their evidence was cogent and consistent. I am satisfied that the prosecution proved the charge of attempted murder under section 220(a) of the Penal Code beyond reasonable doubt.
19. In his defence, the appellant stated that he had been in a relationship with the complainant since 2015 and had assisted her to open a car wash business in 2017. He claimed that after she closed the business in 2019 and became unreachable, he

remarried in November 2019, whereupon the complainant allegedly stormed his home, abused him, and later issued threats by telephone.

20. He further stated that PW1 called him on two occasions, in December 2019 and again in January when he was arrested. Under cross-examination, he maintained that on the material day he was with his wife at Kiswagu Village near Wilson Airport.

21. The defence was a bare denial and did not displace the clear and consistent prosecution evidence. It raised no reasonable doubt.

22. I therefore find that the prosecution proved the charge under section 220(a) beyond reasonable doubt. The conviction is affirmed.

23. The appellant was sentenced to serve 13 years imprisonment. During sentencing, the court considered the pre-sentence report, the appellant's mitigation, and that he was a first offender and sentenced the appellant accordingly. In the premises, I see no reason to interfere.

24. In the end, the appeal is found to be lacking in merit and is dismissed in its entirety.

25. Orders accordingly.

**Judgement dated and delivered virtually this 27th day of
January 2026.**

D. KAVEDZA
JUDGE

In the presence of:

Appellant Present
Mutuma for the Respondent
Karimi Court Assistant.