

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KIBERA
CRIMINAL APPEAL NO. E153 OF 2025

MILTON JUMAAPPELLANT

VERSUS

REPUBLIC.....
RESPONDENT

(Being an appeal against the original conviction and sentence delivered on 28TH January 2025 by Hon. C. Njagi (PM) at Kibera Chief Magistrate's Court, Criminal Case No. E1571 of 2024 Republic vs Milton Juma)

JUDGEMENT

1. The appellant was charged and, after full trial convicted by the Subordinate Court of the offence of Attempted Murder contrary to section 220 (A) of the Penal Code. The particulars were that on 27th July 2024 at Kawangware Congo area in Dagoretti within Nairobi County, the appellant unlawfully to cause the death of Hebby Nekesa by intentionally strangling her with a manila rope caused injuries to the said Hebby Nekesa. He was sentenced to serve forty-five years imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his petition of appeal, the appellant challenged the totality of the prosecution's evidence against which he was convicted. He urged the court to quash his conviction and set aside the sentence imposed.
3. This is the first appellate court and in **Okeno v. R [1972] EA 32**, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyse and re-evaluate the evidence which was before the trial court and come to its own conclusions on that evidence without overlooking the conclusions

of the trial court, but bearing in mind that it never saw the witnesses testify.

4. The prosecution called six (6) witnesses in support of its case. PW1, the complainant, testified on oath that the appellant is her husband. They married in 2021, though their union was characterised by frequent quarrels. Following the birth of their child in 2022, PW1 left the matrimonial home in July 2023 and returned to her parents. In August 2023, she relocated to Nairobi and resided in Kawangware with her sister. After her sister moved out, PW1 remained there with the child. She stated that after reconciliation efforts by the appellant, she forgave him.
5. PW1 testified that on 23rd July 2024 the appellant visited her at Kawangware, and again on 27th July 2024, with plans that they would resume cohabitation in Kitengela. On the material day, the appellant's sister collected the child earlier. The appellant later arrived at about 8.00 p.m. carrying chips, which PW1 suspected to be poisoned and declined to eat. At about 2.00 a.m., she was awakened by the appellant who had tied a rope around her neck and was strangling her while biting her cheek, neck and forehead.
6. She testified that she struggled and screamed, attracting the attention of her neighbour, PW3, who forced entry into the house. Members of the public responded, prompting the appellant to flee while holding a blue manila rope. PW1 stated that she immediately telephoned the appellant's sister, instructing her not to release the child to him, but the appellant had already taken the child. She reported the matter at Muthangari Police Station. The appellant later brought the child to the station. PW1 was subsequently treated at Adams Hospital. In cross-examination, she stated that she had lived with the appellant and their child in Kitengela and

had never been informed that he had remarried. She further stated that she herself had not remarried.

7. PW2, John Njuguna, a clinician at Nairobi Women's Hospital, produced the medical documents relating to PW1. He testified that PW1 was treated on 27 July 2024. Upon examination, she had bruises on the neck, injuries on the forehead, and bite marks on the right chin consistent with human teeth. In cross-examination, he reiterated that there were bruises on her neck and teeth bite injuries on her right chin and forehead.
8. PW3, a neighbour to PW1, testified that he heard her screaming that she was being strangled. He proceeded to her house and found the door locked. Upon gaining entry, he found the appellant assaulting PW1. He observed that PW1 was bleeding from the neck and holding it in pain, while the appellant was holding a blue manila rope. He stated that there was sufficient lighting to enable him to identify the appellant and that the iron-sheet structure of the houses allowed him to clearly hear PW1's screams.
9. PW4, Dennis Owino Onyango, a Government Analyst attached to the Government Chemist, testified that he received an envelope containing chips from Muthangari Police Station, suspected to be laced with poison. Upon analysis, he found the chips contained zinc phosphide, a poison commonly used to kill rats. In cross-examination, he stated that he did not observe any change in colour of the food due to delay in submission of the exhibit. He further explained that when zinc phosphide is placed in food, moisture triggers the release of a pungent smell.
10. PW5, Wycliffe Simiyu, corroborated the evidence of PW1 and PW3. He testified that upon arriving at PW1's house, he found her bleeding from the forehead while the appellant was seated nearby.

He suggested contacting the police. When the gate was opened for the police, the appellant fled. In cross-examination, he stated that the appellant ran away carrying the tied rope and that there was sufficient lighting enabling clear visibility.

11. PW6, PC Billy Muluhya, testified that he responded to the report and conducted investigations. His evidence corroborated that of PW1, PW3, PW4 and PW5. He further stated that upon interrogation, the appellant admitted that he was annoyed but had no intention to kill PW1. He also facilitated the reunion of the child with the mother.
12. The appeal was canvassed by way of written submissions, which have been duly considered, and there is no need to rehash them.
13. Section 220 (a) of the Penal Code provides for the offence of attempted murder as well as the sentence upon conviction:

a. attempts unlawfully to cause the death of another is guilty of a felony and is liable to imprisonment for life”

14. 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”.

15. In the present case, PW1 gave her testimony that at about 2.00 a.m. she was abruptly woken up by the appellant, who had tied a rope around her neck and was tightening it in an attempt to strangle her. She categorically asserted that he bit her on the cheek, neck and forehead as she struggled to free herself. Her evidence establishes a deliberate and sustained assault. She further testified that earlier that evening the appellant had brought her chips which she suspected were poisoned and declined to consume. That suspicion was not speculative; it was subsequently vindicated by forensic analysis. Her account of strangulation and the resulting injuries was directly corroborated by PW3 and PW5, both of whom responded to her screams and observed visible bruising and bleeding. Their testimonies materially reinforce PW1's narrative and firmly situate the appellant at the scene actively engaged in the assault.
16. The medical and scientific evidence was unequivocal. PW2, a clinician, confirmed upon examination that PW1 had bruising on the neck and injuries to the forehead and right chin consistent with human bite marks. These findings are wholly consistent with manual strangulation accompanied by biting, as described by PW1. Further, PW4, a Government Analyst, conducted laboratory examination of the chips recovered and established that they contained zinc phosphide, a toxic substance commonly used as rat poison. This was not conjecture but expert evidence. The presence of poison in food purchased and delivered by the appellant to PW1 on the material night is a compelling incriminating circumstance.
17. In his defence, the appellant, testifying as DW1, did not effectively rebut the prosecution's case. He contended that PW1 had called him regarding relocation to Kitengela and that during their meeting

she raised issues concerning the child. He alleged that she received a late-night call from an unidentified man and failed to explain it, and further claimed that she suffered violent nightmares in which she accused him of intending to kill her. He also asserted that she threatened him, precipitating his arrest. These allegations were unsubstantiated and did not address the core evidence of poisoning, strangulation, and physical injury.

18. DW2, Allan Wanjala, the appellant's brother-in-law, testified that the child had been left at Valerie's residence and that PW1 had demanded the child's return, allegedly threatening that the appellant would be arrested if he failed to comply. This evidence relates to collateral issues concerning custody disagreements and does not controvert the direct evidence of the assault.
19. The sequence of events discloses a calculated course of conduct: the procurement of food laced with poison; the late-night assault; the tying and tightening of a rope around the complainant's neck; and the biting of her face and neck while restraining her. These are not inadvertent acts. The eyewitness accounts of PW3 and PW5, coupled with the medical findings of PW2 and the forensic analysis of PW4, form a consistent and mutually reinforcing evidentiary chain.
20. The appellant's assertion that the attempted poisoning and strangulation were accidental is untenable. Collectively, they establish beyond peradventure both the actus reus (the overt acts of poisoning and strangulation) and the mens rea (a manifest intention to cause death). Strangulation with a rope directed at the neck, a vital and vulnerable part of the body, bespeaks a clear intent to kill. The conviction for attempted murder is therefore sound in law and fact and merits affirmation.

21. Upon independent re-evaluation of the record, this Court finds the appellant's defence to be inconsistent, peripheral and implausible when weighed against the detailed and corroborated prosecution evidence. It neither dislodges the medical findings nor impugns the forensic confirmation of poison. It fails to create any reasonable doubt as to the appellant's culpability.
22. In the premises, the prosecution proved all the essential elements of the offence of attempted murder beyond reasonable doubt. The appellant's defence does not raise a plausible alternative hypothesis. The conviction under section 220(a) of the Penal Code is accordingly affirmed.
23. The appellant was sentenced to forty-five (45) years' imprisonment. Sentencing is a discretionary judicial function that must be exercised judiciously, guided by statute, precedent, and established sentencing principles. Section 329 of the Criminal Procedure Code empowers a trial court to receive and consider such evidence as it thinks fit in order to inform itself as to the appropriate sentence, including mitigating circumstances. Further, the objectives of sentencing being retribution, deterrence, rehabilitation, denunciation and community protection must be balanced against the circumstances of the offence and the offender.
24. While attempted murder is undoubtedly a grave offence attracting severe punishment, the sentence imposed must remain proportionate to the degree of culpability disclosed and comparable to sentences meted out in analogous cases. Upon re-evaluation, and bearing in mind that the offence did not result in loss of life, I am persuaded that the term of forty-five years was

manifestly excessive and did not sufficiently account for mitigating considerations.

25. Consequently, the appeal against sentence succeeds. The sentence of forty-five (45) years' imprisonment is hereby set aside and substituted with a sentence of twenty-five (25) years' imprisonment. The substituted sentence shall run from 31st July 2024, being the date of arrest, pursuant to section 333(2) of the Criminal Procedure Code, Cap 75 Laws of Kenya. Orders accordingly.

Judgement dated and delivered virtually this 26th day of February 2026

D. KAVEDZA
JUDGE

In the presence of:

Appellant Absent

Mr. Karanja for the Respondent

Karimi Court Assistant