



REPUBLIC OF KENYA



**Baya v Republic (Criminal Appeal E038 of 2021)
[2024] KEHC 6245 (KLR) (27 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6245 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CRIMINAL APPEAL E038 OF 2021**

SM GITHINJI, J

MAY 27, 2024

BETWEEN

JOSEPH KWICHA BAYA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of the Lower Court of Kenya at
Mpeketoni by Hon R.G.Mundia – PM dated 29th day of September, 2021)*

JUDGMENT

CORAM: Hon. Justice S. M. Githinji

Appellant in person

Ms Mkongo for the State

1. Joseph Kwicha Baya, the appellant herein was charged in the lower court with a main count of attempted murder contrary to section 220 (a) of the [Penal Code](#).
2. The particulars of this offence are that on the 23rd day of March, 2020 at around 21:00hours in Mpeketoni Central, Mpeketoni Division, Lamu West Sub-County within Lamu County, the appellant attempted unlawfully to cause death of Fridah Nyanga by cutting her severally using a sharp panga.
3. There was to the main count an alternative count of grievous harm contrary to section 234 of the [Penal Code](#). The particulars hereof being that on the 23rd March, 2020 at around 21:00hours in Mpeketoni Central, Mpeketoni division within Lamu County the appellant unlawfully did grievous harm to Fridah Nyanga Ngayya by cutting her severally using a sharp panga.



4. The prosecution case is that Pw-1, the complainant in this case lives at Mavuno, near Majembeni. She is a mother of two. Prior to the incident giving rise to this matter she was working as a waiter at Express. The appellant herein was her man friend and were living together. They however disagreed as he was misusing her hard earned cash in pretext of investing in a joint venture, and neglected assistance to her parents. She parted ways with him and shifted to live with Pw-2 who is her friend.
5. On 23/2/2020 at around 14:00hours the appellant visited the victim at her place of work. He wanted them to reconcile but she declined. He beat her up. In the evening at about 21:30hours the victim had left her place of work and went to the house of Pw-2 where she was living then. The appellant followed her there. He called her outside the house but she declined stating she was tired. The two quarrelled verbally. Pw-2 got outside to talk to the appellant. The victim undressed, took a basin of water and proceeded to a make shift bathroom for a bath. Pw-2 asked the appellant what he wanted and said it's the victim. Pw-2 told him to leave and see her the following day at her place of work. The appellant turned and drew out a panga from his right side hip. Pw -2 sensed danger and yelled, telling the victim to escape. The victim tried to flee but it was too late as the appellant caught up with her and mercilessly attacked her with the said panga. She suffered multiple cut injuries on her head, the left hand with the arm almost completely severed, left thigh and right arm. When the appellant was done with her, he left. Pw-2 covered her body with a lessa as she was naked. She then together with Pw-4 who is a neighbour rushed her to Mpeketoni Sub-County hospital. She lost consciousness and was referred to Coast General Hospital. She was admitted and treated at the place where the right arm was amputated. She was admitted in the said hospital for seven days.
6. The matter was reported at Mokowe Police Station. Pw-5 investigated the case and a brother to the appellant by the name of Joseph Ngala Kikui went to the station and disclosed where the appellant was grazing goats. The officers went to the directed place at Umoja. When the appellant saws them he tried to escape but was chased after and arrested. He led officers to his house where the officers recovered a cream blood stained shirt, a brown trouser and a belt with black patches. The appellant also led them to Mpeketoni Catholic Church and at a scene nearby they recovered a pair of shoes. About 70 metres from the crime scene they recovered a sharp blood stained panga, hidden inside a thicket. They took the items together with the appellant to the station. The appellant was later charged with the offences carried in the charge sheet.
7. The appellant gave a brief defence where he stated that on 24/3/2020 he was arrested by the officers at his place of work at Umoja and taken to Mpeketoni Police Station. He could not tell the cause of the arrest. He was later charged with an offence of which he was not involved.
8. The trial court evaluated the evidence and found him guilty of the offence in the main count. He was subsequently convicted of it and sentenced to serve 30 years' imprisonment.
9. Dissatisfied with the sentence he appealed to this court against it on the grounds that: -
 1. The imposed sentence is excessively harsh and unjust given that he is a first offender; he is a young man who need bring up a family.
 2. The said sentence does not go well with the sentencing policy of 2015.
 3. The appellant is remorseful, regret his actions and is repentant.
 4. He is a father of two school going children who needs his care as a father.
 5. He worked tirelessly to support his family and himself and given a chance he will continue doing so.



6. He prays for reductions of the sentence and more so for non-custodial sentence.

10. The appeal was canvassed by way of written submissions and both parties filed their respective submissions. The appellant was convicted for the offence of attempted murder, contrary to section 220 of the penal code, which carries a sentence of life imprisonment. In sentencing the court among other factors considers the gravity of the offence; considering the actual, foreseeable, and intended impact of the offence and the offender's responsibility. The offence was committed to a mother of two children who used to work and provide for them. It left her disabled given that her right hand was amputated due to injuries inflicted by the appellant herein. Apart from that she suffered other serious cut injuries. The reason for the brutal act against her is that she had cut short the love relationship she had with the appellant. The offence was committed in a most disgusting manner, has a lasting implication on the victim and her family, and cannot be justified in whatever manner. It called for a stiff sentence. The respondent is of the same position and the sentence of 30 years' imprisonment is well deserved. I find no ground on which to interfere with it in favour of the appellant. The appeal lacks merit and is hereby dismissed.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 27TH DAY OF MAY, 2024

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S.M. GITHINJI

JUDGE

In the Presence of; -

1. Appellant

2. Mr Mulamula for the state

