

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO. 4 OF 2014

From original conviction and sentence by Wajir Principal Magistrate (L. Kassan, PM) in Criminal Case No. 13 of 2014

GERAT ALI OMAR.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

Gerat Ali Omar was convicted on his own plea of guilty for the offence of causing grievous harm. He was convicted and sentenced to serve twenty five (25) years in jail. He was accused of causing grievous harm to Abdullahi Ali Omar on 2nd January 2014 at Biyamathow Location of Wajir County contrary to section 234 of the Penal Code.

He filed this appeal dated 20th January 2014 on 27th January 2014 listing seven grounds. On 31st January 2014, he filed through his counsel Mr. Wanyoike, a Notice of Motion under Sections 362 to 367 of the Criminal Procedure Code seeking to set aside the sentence and set the case down for hearing afresh. He has supported the application with one main ground that the applicant was mentally unstable at the time of committing this offence and that at the time of taking the plea in the lower court the family was frantically trying to acquire medical documents to show that the applicant suffers from some mental disability.

The respondent did not submit in response choosing to leave matters to court to decide.

Mr. Wanyoike successfully applied to withdraw the appeal filed by the appellant in person and instead argued this application.

In support of this application are two authorities: **Republic vs. Boniface Mutembei (2012) eKLR** and **Grace Nyoroka vs. Republic (2007) eKLR**. In the first case the trial court substituted the murder charge with manslaughter because of the accused person's mental incapacity caused by intoxication. In the second case the Court of Appeal quashed the conviction and set aside the sentence imposed on the appellant after his own admission of the offence and referred the case to hearing de novo. The Court found that the appellant suffered mental disorders and faulted the trial court for sentencing him to life imprisonment despite being alive to the fact that he suffered from some mental disorders.

I have considered the medical notes from Wajir District Hospital and what is referred to as a medical report. All the documents are copies that are not certified as true copies of the original. All the copies bear handwritten notes and are not clear. However, I will give the appellant the benefit of doubt on his mental capacity and allow this application. I hesitate to say more for fear of prejudicing the trial.

The conviction is quashed and the sentence of 25 years is hereby set aside. The applicant shall remain in custody until he is produced before the Wajir Principal Magistrate for further directions. I however order that a different magistrate of competent jurisdiction hears this matter de novo. I make orders accordingly.

Dated, signed and delivered this 30th July 2014.

S. N. MUTUKU

JUDGE