



REPUBLIC OF KENYA



KENYA LAW
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**Oyenje v Republic (Criminal Appeal E016 of 2024)
[2024] KEHC 7630 (KLR) (25 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7630 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL APPEAL E016 OF 2024**

**KW KIARIE, J
JUNE 25, 2024**

BETWEEN

LAMECK OUMA OYENJE APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal Case No. E012 of 2023 of the Chief Magistrate's Court at Homa Bay by Hon. C.A.S. Mutai–Senior Principal Magistrate)

JUDGMENT

1. Lameck Ouma Oyenje, the appellant herein, was convicted after he pleaded guilty to the offence of arson contrary to section 332 (a) of the [Penal Code](#) and the offence of assault causing actual bodily harm contrary to section 251 of the [Penal Code](#).
2. The particulars of the offences were that on the 1st day of January 2023, at Kajulu Wakeru village, Rangwe sub-county in Homa Bay County, he wilfully and unlawfully set fire to the dwelling house of Serfina Auma Oyenje. On the same day and at the same place, he wilfully and unlawfully assaulted Serfina Auma Oyenje, occasioning her actual bodily harm.
3. The appellant was sentenced to serve ten years imprisonment in counts one and two; he was sentenced to six months imprisonment. He has appealed against both conviction and sentence. The appellant was in person. He raised the following grounds of appeal:
 - a. That the appellant could not understand the facts of the offence.
 - b. That the appellant charged and pleaded guilty without knowing the consequences of the offence.
 - c. That the ten years imprisonment imposed was harsh and excessive.



4. The state opposed the appeal. It argued that the two offences were proved to the required standards and that the sentences were commensurate with them.
5. This is a first appellate court. As expected, I have analysed and evaluated all the evidence adduced before the lower court afresh, drawing my conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will, therefore, be guided by the celebrated case of *Okeno v Republic* [1972] EA 32.
6. In the leading case of *Joseph Marangu Njau v Republic* [2015] eKLR, the Court of Appeal stated:

Whereas all the perils a guilty pleader embraces may not much matter in petty offences or in mere infractions which do not present much risk to life or liberty, much is at stake in the offences that attract more penal severe consequences. In the case before us, the balance of the appellant's natural life stood to be spent behind bars upon conviction.

Cognizant of the ever-present dangers of misjustice [sic] in guilty pleas, the courts have been vigilant to act upon and to uphold them only when they are clear, express, unambiguous and unequivocal. When a plea of guilty is challenged as not having been entered unequivocally, it becomes a matter of law that permits the superior courts to entertain appeals notwithstanding Section 348 of the *CPC* aforesaid. The predecessor of this Court considered and authoritatively laid down the manner in which pleas of guilty should be recorded and the steps which should be followed in the decades-old case of *Adan v Republic* [1973] EA 445, as follows;

- “(i) the charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands;
- (ii) the accused's own words should be recorded, and if they are an admission, a plea of guilty should be recorded;
- (iii) the prosecution should then immediately state the facts, and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts;
- (iv) if the accused does not agree with the facts or raise any question of his guilt, his reply must be recorded and change of plea entered;
- (v) if there is no change of plea, a conviction should be recorded, and a statement of the facts relevant to sentence together with the accused's reply should be recorded.”

In the instant case, I will endeavour to establish if the plea adhered to the procedure described in *Adan* (supra).

1. On the 14th day of April 2023, the accused, of his own volition, applied to change his plea. He, however, did not plead guilty. He maintained that he was not aware of what he was doing, for he was drunk. The court entered a plea of not guilty.
2. Hon. C.A.S. Mutai took over this matter on the 11th day of September 2023. Since it was partly heard before another magistrate, he explained to the appellant the import of section 200 (3) of the *Criminal Procedure Code*. The appellant opted to have the matter proceed from where it had previously



reached and asked for the charges to be read to him. He pleaded guilty and confirmed that the facts were actual. He was, therefore, convicted.

3. I, therefore, find that the plea by the appellant was unequivocal.
4. Section 348 of the *Criminal Procedure Code* provides as follows:

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

11. Having established that the plea was taken correctly, I will therefore endeavour to verify the legality of the sentence, bearing in mind that an appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the order of the trial court. These circumstances were well illustrated in the case of *Nillson v Republic* [1970] EA 599, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in *James v REX* [1950], 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. (*R v Shershewcity* [1912] CCA 28 T.LR 364).

12. Section 332 (a) of the *Penal Code* provides:

Any person who wilfully and unlawfully sets fire to—

- a. any building or structure whatever, whether completed or not; or

.....

is guilty of a felony and is liable to imprisonment for life.

13. Section 251 of the *Penal Code* provides:

Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.

14. The sentences in both offences cannot be said to be harsh when there are no mitigating facts.
15. Both offences were committed in the same transaction, and the sentences should have been ordered to run concurrently. Secondly, the accused remained in custody from the time of his arrest. The sentence ought to have run from that time.
16. I, therefore, order that the sentences in counts one and two run concurrently, effective from the 2nd day of January 2023. But for this amendment, the appeal is dismissed.

DELIVERED AND SIGNED AT HOMA BAY ON THIS 25TH DAY OF JUNE 2024

KIARIE WAWERU KIARIE

JUDGE

