



REPUBLIC OF KENYA



KENYA LAW
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**Adunga v Republic (Criminal Appeal 33 of 2020)
[2024] KEHC 8903 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8903 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL 33 OF 2020**

AC MRIMA, J

JULY 25, 2024

BETWEEN

MESHACK KIARIE ADUNGA APPELLANT

AND

REPUBLIC STATE

JUDGMENT

1. Meshack Kiarie Adunga, the Appellant herein, was charged with the offence of Attempted Murder contrary to Section 220(a) of the Penal Code. The particulars of the offence were that on 10th February 2017 at Matisi within Trans Nzoia county, the Appellant attempted to unlawfully cause the death of Millan Ngendo Njoroge by cutting her neck with a knife.
2. The Appellant was arraigned in Court on 27th February, 2017. He pleaded not guilty to the charge. He was subsequently tried, found culpable and eventually convicted. He was then sentenced to serve 25 years in jail.

The Appeal:

3. Aggrieved by the conviction and sentence, the Appellant, then acting in person, filed a Petition of Appeal on 17th June 2020. He raised several grounds challenging both the conviction and sentence.
4. Later, in July 2023, the Appellant instructed the firm of Messrs. Teti & Company Advocates to appear for him. The firm filed a Notice of Appointment of Advocates dated 18th July, 2023.
5. Subsequently, a Record of Appeal was filed. The Appellant substituted the original Petition of Appeal with an Amended Petition of Appeal. It was dated 18th July, 2023.
6. In the Amended Petition of Appeal, the Appellant abandoned the appeal against conviction and pursued the one against sentence.



7. The following grounds of appeal were preferred: -
 1. The learned magistrate misdirected herself and acted on wrong principles in sentencing the appellant to serve a jail term of 25 years.
 2. The learned magistrate misdirected herself and gave the sentence that was manifestly excessive in the circumstances of this case as there were no aggravating factors to compel the trial court to impose on him the said sentence.
 3. The learned trial magistrate overlooked material factors and the fact that the appellant who was a first offender and also overlooked the appellant's mitigation.
 4. The learned trial magistrate in passing the sentence, took into account an irrelevant factor and thereby applying the wrong principle.
8. The appeal was eventually heard by way of written submissions. Both parties duly filed their respective submissions. The Appellant's submissions were dated 18th July, 2023 whereas the Respondent's submissions were dated 16th August, 2023.
9. Both parties made comprehensive submissions and referred to several decisions in support of their rival positions. Whereas the State prayed that the appeal on sentence be dismissed, the Appellant prayed that the appeal be allowed and the sentence of 25 years' imprisonment be substituted with that of 6 years' imprisonment to run as from 10th February 2017, the day the Appellant was arrested.

Analysis:

10. This Court is the first appellate Court.
11. The High Court in *Wanjema v. Republic* (1971) EA 493 laid down the general principles upon which the first appellate Court may act on when dealing with an appeal on sentence. An appellate Court can only interfere with the sentence imposed by the trial Court if it is satisfied that in arriving at the sentence the trial Court did not consider a relevant fact or that it considered an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the appellate Court must not lose sight of the fact that in sentencing, the trial Court exercised discretion and if the discretion is exercised judicially and not capriciously, the appellate Court should be slow to interfere with that discretion.
12. The foregoing has been echoed in several other decisions including *Benard Kimani Gacheru vs. Republic* [2002] eKLR among others.
13. This Court has carefully considered this matter with caution and care. Suffice to say that sentencing is a crucial part in the criminal process and in the larger administration of justice. It is also discretionary.
14. In exercising the discretion, a sentencing Court is called upon to be guided by a raft of considerations. Such are discussed at length in the Sentencing Guidelines published on 29th April, 2016 vide Gazette Notice No. 2970 by the Hon. The Chief Justice of the Republic of Kenya who is also the Chairperson of the National Council on the Administration of Justice (NCAJ) and in case law including the Supreme Court in *Petition No. 15 of 2015 Francis Karioko Muruatetu & another v Republic* [2017] eKLR.
15. The purpose of sentencing is expounded in page 15, paragraph 4.1 of the Sentencing Policy Guidelines as follows: -

Sentences are imposed to meet the following objectives:



1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
 2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
 3. Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
 4. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims', communities' and offenders' needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender's contribution towards meeting the victims' needs.
 5. Community protection: To protect the community by incapacitating the offender.
 6. Denunciation: To communicate the community's condemnation of the criminal conduct.
16. The Apex Court in *Francis Karioko Muruatetu & another v Republic* case [supra] considered various relevant and salient factors in sentencing. Some include: -
- a. age of the offender;
 - b. being a first offender;
 - c. whether the offender pleaded guilty;
 - d. character and record of the offender;
 - e. commission of the offence in response to gender-based violence;
 - f. remorsefulness of the offender;
 - g. the possibility of reform and social re-adaptation of the offender;
 - h. any other factor that the Court considers relevant.
17. The sentencing Court was careful in the manner it conducted the proceedings. The State tendered its submissions and the Appellant made his elaborate mitigations.
18. In coming up with the sentence, the Court took into account all the relevant considerations and was satisfied that the Appellant's sentence of 25 years in jail was appropriate in the unique circumstances of the case.
19. This Court does not see how the sentencing Court erred. The Court even considered the period the Appellant had been in remand.
20. The appeal, therefore, is unsuccessful. The only reprieve the Appellant will have from this Court is that the sentence shall run as from the date of plea-taking; that is 27th February, 2017.

Disposition:

21. As I come to the end of this ruling, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 thereby mostly being away from the station. Apologies galore.



22. Consequently, the following final orders do hereby issue: -
- a. The appeal on sentence is hereby dismissed save that the sentence shall run as from the date of plea-taking; that is 27th February, 2017.
 - b. File marked as Closed.
23. Orders accordingly.

DELIVERED, DATED AND SIGNED AT KITALE THIS 25TH DAY OF JULY, 2024.

A. C. MRIMA

JUDGE

Judgment virtually delivered in the presence of:

Mr. Teti, Counsel for the Appellant.

Miss. Kiptoo, Learned Prosecutor instructed by the Director of Public Prosecutions for the State.

Chemosop/Duke – Court Assistants.

