Majuma v Republic (Criminal Appeal 70 of 2020)
[2023] KEHC 2515 (KLR) (27 March 2023) (Judgment)

Neutral citation: [2023] KEHC 2515 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL APPEAL 70 OF 2020

RN NYAKUNDI, J

MARCH 27, 2023

BETWEEN

LINET MAJUMA ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal against the sentence of Hon. N. Wairimu in Eldoret Chief Magistrates' Criminal Case No. 3526 of 2019 – R vs Linet Majuma delivered on 25th April 2019)

JUDGMENT

Coram: Before Hon. Justice R. Nyakundi

Mr. Mugun for the State

1. The appellant was charged with the offence of grievous harm contrary to section 234 of the *Penal Code*. The particulars of the offence were that on 10th June 2016, at 0630 hrs at Mwandori estate in Eldoret West District within Uasin Gishu County unlawfully did maim to Dorcas Wangare.

2. The appellant pleaded not guilty and the matter proceeded to full hearing. Upon considering the evidence tendered before the court, the testimony of the witnesses and the submissions of the parties, the trial magistrate convicted the accused and sentenced him to 7 years' imprisonment on April 25, 2019.

3. The appellant being aggrieved with the sentence only, instituted the present appeal vide a petition of appeal premised on the following grounds;

    1. (I) pleaded not guilty at the trial

    2. That (I) am a first offender.

3. That (I) have three children aged 12, 9, 3 ½ years old respectively, that (I) left at home alone with no one to take care of them. (My) children cannot cope well with their education and growth due to lack of lack of their motherly love.

4. That (I) come from a family of four, (our) father passed on in 2012 leaving all the family responsibilities to me and my mother.

5. That (I) was not satisfied with this sentence because (I) solely did not commit this offence, (my) conscience is very clear and (I) believe that your honourable court will listen carefully to (my) appeal and release (me) from this accusation.

Whether the sentence should be reviewed

4. This court is apportioned the power to revise sentences under section 364 of the *Criminal Procedure Code* cap 75, which provides:

364. (1) in the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High court may -

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by section 354, 357 and 358, and may enhance sentence;

(b) in the case of any other order than an order of acquittal, alter or reverse the order.

5. The appellant was charged with causing grievous harm under section 234 of the *Penal Code* which states;

Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.

In *R vs Raddich (*1954) NZLR 86 at 87 the court in giving weight to deterrence observed as follows:- " one of the main purposes of punishment is to protect the public from the commission of such crimes by making it clear to the offender and to other persons with similar impulses that, if they yield to them, they will meet with severe punishment in all civilised countries all ages, that has been the main purpose of punishment and it still continues so"

6. It is settled law that sentencing of an offender convicted of a known offence is purely discretionally and within the powers of the trial court. An Appeals court can only interfere with the verdict as premised in the principles set out in *S vs Malgas* 2001 (1)SACR 469 (SCA) at para12 where it was held that:

A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court...However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate"

7. I am fortified by the very circumstances of the present proceedings directed as they are there are no compelling new evidence or any of the grounds as enunciated the Malgas case to persuade the court to interfere with the impugned sentence. Therefore, as a matter of interpretation, I have considered the circumstances of the offence, the gravity of the harm caused to the complainant and the fact that the

trial court had an opportunity to assess the demeanour of the witnesses in court. It is my considered view that the trial magistrate exercised her discretion judiciously in meting out the sentence. I have also taken into account the time served by the appellant at the time of this appeal and in the premises I find no reason to interfere with the sentence. The only rider is for the committal warrant to be amended for the commencement of the sentence to take effect from the June 14, 2016. The appeal is hereby dismissed.

Orders accordingly, 14 days Right of Appeal.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 27th DAY OF MARCH 2023

.....

R. NYAKUNDI

JUDGE

In the presence of

Mr. Mugun for the State

Appellant in person