



REPUBLIC OF KENYA



KENYA LAW
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**Ooko v Republic (Criminal Appeal E001 of 2023)
[2023] KEHC 2333 (KLR) (27 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2333 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL APPEAL E001 OF 2023**

**KW KIARIE, J
MARCH 27, 2023**

BETWEEN

JULIUS OTIENO OOKO APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal case NO.E013 of 2023 of the Senior Resident Magistrate's Court at Mbita by Hon. N.N. Moseti–Senior Resident Magistrate)

JUDGMENT

1. Julius Otieno Ooko, the appellant herein, was convicted after pleading guilty to the offence of grievous harm contrary to section 234 of the *Penal Code*.
2. The particulars of the offence are that on December 30, 2022 at Komena village, Mbita Township, in Mbita sub County within Homa Bay County, did grievous harm to Denis Otieno Ooko.
3. The appellant was sentenced to twenty five years' imprisonment. He was aggrieved and filed this appeal against sentence. He raised grounds of appeal as follows:
 - a. That the trial magistrate handed me a very harsh sentence.
 - b. That the trial court did not consider his mitigation.
4. The appeal was opposed by the state. It was contended that the sentence was the prescribed one.
5. This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno vs Republic* [1972] EA 32.



6. 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.

7. Section 234 of the *Penal Code* provides:

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

8. The complainant in this case sustained the following injuries:

- a. A deep cut wound on the chin extending to the left jaw; and
- b. Cut wounds at the back of the head.

He was discharged home through the dental clinic.

9. An appellate court would interfere only where there exists, to a sufficient extent, circumstances entitling it to do so. *Nelson vs 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 TLR 364."

10. It was not easy to discern the motive for the offence from the facts but the injuries were serious and the mode of the attack was vicious.

11. The appellant demonstrated his remorse by pleading guilty to the offence. He ought to have been given credit on this fact. I am persuaded to interfere with the sentence. I accordingly set aside the sentence by the learned trial magistrate and substitute it with a sentence of fifteen years' imprisonment.

12. The appeal on sentence therefore succeed.

DELIVERED AND SIGNED AT HOMA BAY THIS 27TH DAY OF MARCH, 2023

KIARIE WAWERU KIARIE

JUDGE

