



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Abadiba v Republic (Criminal Appeal E030 of 2022)
[2023] KEHC 19644 (KLR) (30 June 2023) (Judgment)**

Neutral citation: [2023] KEHC 19644 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL APPEAL E030 OF 2022**

**JN ONYIEGO, J
JUNE 30, 2023**

BETWEEN

ADAN WEDO ABADIBA APPELLANT

AND

REPUBLIC RESPONDENT

(From the original Conviction and Sentence in The Principal Magistrate's Court at Wajir in Criminal Case No. E121 of 2022 delivered by Hon. Mugendi Nyaga SRM)

JUDGMENT

1. The applicant jointly with another was charged with the offence of grievous harm contrary to Section 234 of the *penal code*. Particulars were that on the 16th day of March, 2022 at Kumbi location in Wajir East Sub-county within Wajir County together with others not before court unlawfully did grievous harm to Yussuf Aliyo Abdullahi.
2. Having returned a plea of not guilty, the matter proceeded to full trial with the prosecution calling three witnesses. Upon being put on his defence, the applicant gave sworn testimony. He was finally convicted and sentenced to 5 years' imprisonment on April 28, 2022. Aggrieved with the conviction and sentence, the appellant appealed to this court vide a memorandum of appeal filed on June 27, 2022.
3. However, during the hearing, the appellant abandoned his appeal against conviction and opted to argue the case against sentence on grounds that; he was remorseful, trial court did not take into account his mitigation and that he is remorseful for branching into the wrong direction.
4. On their part, Prosecution relied on their submissions filed on April 25, 2023 opposing the appeal against conviction and sentence. That the sentence meted out was lawful.



5. I have considered the grounds of appeal herein and summons by both counsel. The applicant is challenging sentence as being excessive. He is charged under Section 234 of the Penal code whose penalty is life imprisonment.
6. I am alive to the fact that sentencing is at the discretion of the trial court and that the trial court will only interfere with it if the same is excessive; the trial court applied wrong legal principles or that it took into consideration irrelevant factors. See *Jackson Konde Kyalo v Republic* [2018] eKLR.
7. Taking into account the judiciary guidelines on sentencing policy, sentence imposed on an accused person must be proportionate to the offence committed. In this case, the offence the applicant was charged with is punishable with life imprisonment. The offence is quite serious. A sentence of 5 years is therefore not excessive.
8. Accordingly, I do not find merit on the appeal. The conviction and sentence are accordingly upheld. The appeal is consequently dismissed.

Right of Appeal 14 days.

DATED, SIGNED AND DELIVERED AT GARISSA THIS 30TH DAY OF JUNE, 2023.

.....

J.N. ONYIEGO

JUDGE

