



REPUBLIC OF KENYA



**Shlaho v Republic (Criminal Appeal E090 of 2022)  
[2023] KEHC 22980 (KLR) (29 September 2023) (Judgment)**

Neutral citation: [2023] KEHC 22980 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL APPEAL E090 OF 2022  
SC CHIRCHIR, J  
SEPTEMBER 29, 2023**

**BETWEEN**

**VINCENT SHLAHO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The Appellant was charged with the offence of grievous harm contrary to Section 234 of the [penal code](#). The particulars were that on the 17th day of November 2017 at Shinyahu Bar village in Kakamega central district within Kakamega county with others jointly with others not before court unlawfully and a grievous harm to Humphrey Njirimani Mkopi.

He faced a 2nd charge of creating disturbance contrary to Section 95(1) (b) of the [penal code](#).

2. He was convicted of the 1st count and sentenced to 4 years in prison.
3. A perusal of the petition of Appeal as well as the Appellant's submissions show that the Appellant is appealing against the sentence only.

**Petition of Appeal.**

4. The grounds of appeal are hereby summarized and paraphrased as follows:

1. That he pleaded guilty to the charges.
2. That the sentence of 4 years was heavy and harsh to bear.
3. That he was a first offender
4. That he is the sole provider for his 6 children as his spouse has no formal income.



5. The Appeal proceeded by way of submissions. However, the Respondent did not file any submissions.

### **Appellant's Submissions.**

6. In his submissions, the Appellant reiterated the grounds of appeal, and adds that he has undergone reform while in prison; that he has also acquired some skills which he can use to impact his life positively if released. He prays that the sentence be deemed to have been served or be given a non-custodial sentence.

### **Determination**

7. I have considered the grounds of appeal and the Appellant's submissions. Sentencing is an act of discretion and the trial court can only interfere sparingly. In the case of *Bernard Kimani Gacheru vs Republic* Cr Appeal No 188 of 2000 (Nakuru) the court of Appeal held: "It is now settled law, following several decisions of this court and by the high court, that sentence is a matter that rests with the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the Appellate court will not easily interfere with the sentence unless that sentence is manifestly excessive in the circumstance of the case, or that the trial court overlooked some material factor or considered some wrong material, or acted on the wrong principle. Even if the appellate court feels that the sentence is heavy and that the Appellate court might itself not have passed the sentence these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless anyone of these matters already stated is shown to exist."

8. Section 234 of the *penal code* under which the appellant was charged provides as follows: "Any person that unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life"

9. Thus, the Appellant could as well have been imprisoned for life, but the trial court in exercise of its discretion meted out 4 years. In the circumstances the sentence was rather modest in my view. He escaped with a very lenient sentence.

10. The Appellant's appeal therefore is completely unmerited.

It is hereby dismissed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 29TH DAY OF SEPTEMBER 2023.**

**S.CHIRCHIR,**

**JUDGE.**

**In the presence of :**

E.Zalo- Court Assistant

Ms. Osoro for the Respondent

The Appellant- appearing in person.

**In the presence of**

E. Zalo - CA

