



**Mar v Republic (Criminal Appeal E033 of 2022)
[2023] KEHC 24517 (KLR) (30 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24517 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL APPEAL E033 OF 2022
DO OGEMBO, J
OCTOBER 30, 2023**

BETWEEN

ALI SHAMIR MAR APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The appellant, Ali Shamir Mar, was charged before the lower court with the offence of grievous harm contrary to Section 234 of the *Penal Code*. The particulars were that on 24-11-2022 at about 2300 hours at Bondo Township in Bondo Sub-county within Siaya County, he unlawfully did grievous harm to Ngenda Kumana. On the charges being read out to him, the applicant pleaded guilty to the charge as read. He similarly confirmed that the facts of the case were correct as read out.
2. The court proceeded to enter a Plea of guilty and upon considering the mitigation of the appellant and the probation Officer's Presentence report, proceeded to sentence the appellant to serve 10 years imprisonment.
3. Aggrieved, the appellant has appealed to this court. In the petition of appeal filed herein on 22-12-2022, the appellant has listed the following grounds of appeal:
 1. That he does not clearly understand Kiswahili or English languages being of Tutsi tribe from Burundi.
 2. That he was not properly informed of the charges in a language he understands and no interpreter was availed to him.
 3. That he was not accorded adequate time to prepare for his case.
 4. That he appeals against both the conviction and sentence.



4. He has requested this court to order for a retrial of his case. The prosecution opposes this appeal on grounds that the charge was read out to the appellant in Kiswahili language which he understands. That he did not raise the issue of language. He even mitigated in Kiswahili language. It was maintained that the sentence of 10 years was proper.
5. This appeal has been canvassed by way of written submissions. The submissions of the appellant were that the Plea was unequivocal. Also that the ingredients of the charge were not explained to the appellant. Further that the sentence was harsh and did not take into account of his mitigation of remorse.
6. I have considered the submissions of the appellant. To me there are only 2 issues for determination in this appeal:
 - i. Whether the Plea as taken was unequivocal.
 - ii. The issue of sentence.
7. I have considered the record of proceedings of the trial court. The record shows that upon the appellant answering the charges in Kiswahili, he was duly advised on the severity of the charge and the sentence there to. Again he confirmed (in Kiswahili), that he was ready to listen to the facts of the case. He again responded that the facts were correct as read out. The appellant proceeded to make his mitigation, also in Kiswahili language.
8. This court is convinced that the appellant clearly understands Kiswahili language and was able to communicate effectively in the language. Even the Probation Officer, pursuant to the preparation of the Presentence report interviewed the appellant and the appellant was able to respond and give the necessary details regarding his background. At no time, did he raise the issue of language barrier, specifically that he does not understand well Kiswahili language. How else would the Probation officer have got the personal details of the appellant did not disclose the same, and in Kiswahili language. More still, he does business in Kenya of selling shoes. He would not be able to conduct such business without any knowledge of Kiswahili language.
9. For these reasons, this court is convinced that the appellant understands well and knows Kiswahili language and that the Plea as taken by the trial court was equivocal as the appellant understood the charge, and the appurtenant facts in support of the same. This ground of appeal therefore fails.
10. On the 2nd ground of sentence, I have considered Section 234 of the *Penal Code* under which the appellant was charged. The sentence provided therein is upto imprisonment for life. The appellant was sentenced to serve 10 years imprisonment. I have considered the circumstances of this case as submitted by the Prosecution side, and the P3 form produced in evidence and which shows the extent of the injuries suffered by the complainant (Exh-2). The sentence meted out on the appellant is manifestly excessive.
11. Using the power of this court under Section 354 of the *Criminal Procedure Code*, I revise and set aside the sentence of 10 years imprisonment meted out by the trial court. I order that the appellant shall serve 2 years imprisonment.

Right of Appeal 14 days.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 30TH DAY OF OCTOBER, 2023

D.O. OGEMBO

JUDGE



Court:

Judgment read out in Court in presence of the appellant and Ms. Mumu for the State.

D.O. OGEMBO

JUDGE

30.10.2023

