



**Korir v Republic (Criminal Appeal 62 of 2020)
[2022] KEHC 3134 (KLR) (25 May 2022) (Judgment)**

Neutral citation: [2022] KEHC 3134 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL APPEAL 62 OF 2020**

**EKO OGOLA, J
MAY 25, 2022**

BETWEEN

DISMAS KIPKEMBOI KORIR APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against sentence in CM Cr. No.E391 of 2020 by Hon. R. Odenyo – SPM)

JUDGMENT

1. The appellant was on 2/11/2020 charged with the offence of assault contrary to section 251 of the Penal Code. It was the prosecution's case that on the 30/10/2020 at West Farmers Estate, Kipkenyo location of Kapsaret Sub-county within Uasin Gishu County he intentionally and unlawfully assaulted Jacob Simiyu causing him bodily harm. The appellant pleaded not guilty to the charge and the matter was set down for hearing. On 9/12/2020 when the matter came up for hearing, the appellant changed his plea and a plea of guilt was entered. Thereafter, the prosecution counsel read out the facts and the appellant confirmed that the facts as read out were correct, He was convicted on his own admission of guilt. The appellant was given a chance to mitigate, and he did so. Sentencing was deferred to 11/12/2020 and he was sentenced to four years imprisonment. Being dissatisfied with the trial court's decision on sentence, the appellant has filed the present appeal on sentence. The Petition of Appeal was filed on 23/12/2020. The appellant filed five (5) grounds of appeal in which he is only challenging the sentence that was passed by the trial court. He is praying for a reduction of the sentence on grounds that the same is too harsh. He further states that he has since reformed and promises to be an upright citizen. The offence of assault is provided for under section 251 of the Penal Code. Section 251 provides:

“Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanor and is liable to imprisonment for five years.



Sentencing is a crucial aspect of the criminal justice system. It is trite law that in every trial, once an accused has been found guilty and convicted, the court shall proceed to pass sentence on him or her. Section 207 (2) of the [Criminal Procedure Code](#) provides:

“If the accused person admits the truth of the charge otherwise than by a plea agreement his admission shall be recorded as nearly as possible in the words used by him and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary:

Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded.”

The facts were read out by the prosecution counsel and it emerged that on the material date, the appellant while armed with a panga chased the complainant and cut the complainant on the head. This the appellant did without provocation at all. The complainant fell down and lost consciousness and when he woke up, he found himself at the hospital. The complainant sustained a deep cut wound on the head, a fact that was corroborated by the medical documents that were produced as prosecution exhibits.

The Sentencing Policy Guidelines have at section 4 set out the objectives of sentencing. Section 4.1 sets out the objectives as follows:

1. Retribution: To punish the offender for his/her criminal conduct in a just manner.
2. Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
3. Rehabilitation: To enable the offence reform from his criminal disposition and become a law-abiding person.
4. Restorative Justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demand that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.
5. Community Protection: To protect the community by incapacitating the offender.
6. Denunciation: To communicate the community’s condemnation of the criminal conduct.

Section 4.2 further provides that as much as possible, sentences imposed should be geared towards meeting the above objectives in totality. From the foregoing, it is clear that one of the major aims of sentencing is to protect innocent citizens of the society from harmful acts of the criminals. In the case of [Kamaro Wanyingi v Republic](#) [2008] eKLR Hon. Justice M. S. A. Makhandia held that:

“....The sentence must serve to remedy the wrong in the most appropriate way, while not losing track of human dignity and respect. “A former Chief Justice of Kenya; Mwenda CJ once remarked:- “For my part, I am of the persuasion that all things being equal, it is the very nature of things that courts in Kenya should find themselves laying more emphasis on deterrence, and on the protection of the public than on retribution and reformation. This is in my view what is likely to produce best results in the fight against criminal element.”

2. I have carefully considered the appeal: I have also considered:



i) Gravity of the offence

In the instant case, the offence for which the appellant was convicted is a serious one which has continued to affect the entire society. Assaults have in many cases led to deaths of the victims and/or caused severe harm to the victims. The trial court recognized the offence as a serious one while sentencing the appellant to four (4) years imprisonment.

(ii) Impact on the victim

Impact on the victim is another consideration. From the facts of the case, it is evidence that the complainant underwent such a traumatic experience that would forever linger in his memory. He sustained a serious head injury and at the age of 66 years this would most likely have a profound impact on his health. Further, the appellant attacked the complainant while armed with a panga and without any provocation at all.

(iii) Circumstances of the offender

The appellant was given a chance to mitigate and he informed the court that he was drunk at the time of the commission of the offence. He stated that he would not repeat the offence and that he lived in Eldoret with a family that depended on him.

He further states that he is repentant, remorseful and has been rehabilitated. This fact remains to be seen.

Conclusion

3. Taking into account the evidence by the prosecution and the circumstances of the case, I find and hold that the sentence of four years imprisonment was not harsh or excessive. It is a sufficient and deferent sentence. Furthermore, the *Penal Code* provides for a maximum sentence of five years imprisonment. Accordingly, therefore, the appeal herein fails and is hereby dismissed.

DATED, SIGNED AND DELIVERED AT ELDORET THIS 25TH DAY OF MAY 2022.

E. K. OGOLA

JUDGE

