



**Ochoki v Republic (Criminal Appeal E067 of 2021)  
[2022] KEHC 15349 (KLR) (17 November 2022) (Judgment)**

Neutral citation: [2022] KEHC 15349 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CRIMINAL APPEAL E067 OF 2021  
RPV WENDOH, J  
NOVEMBER 17, 2022**

**BETWEEN**

**DOMINIC AREBA OCHOKI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. Count 1: Threatening to kill contrary to section 223 (1) of the *Penal Code*. The particulars of the charge are that on 22/2/2021 at Stella Shopping Centre, Kanyamkago Location in Uriri Sub County, while armed with a panga, and without lawful excuse, uttered the words I will kill you, threatening to kill Susan Akinyi.
2. Count II: Assault causing actual bodily harm contrary to section 251 of the *Penal Code*, in that willfully and unlawfully assaulted Susan Akinyi and occasioned her bodily harm.
3. The appellant was sentenced to serve three (3) years imprisonment less the one (1) month he had spent in remand.
4. He has appealed against sentence on grounds that he pleaded guilty to the charges, has no previous convictions; that he has reformed for the period he has been in prison and requests to be considered for release as he has only six months left of his sentence.
5. The prosecution counsel Mr. Mulama opposed the appeal. Counsel urged that the appellant was sentenced to only three (3) years out of a possible ten (10) years and that the court was benevolent enough to consider the month he was in remand. Counsel argued that considering the seriousness of the offence and the circumstances under which the offence was committed, the appellant should be left to complete his sentence in prison.



6. The appellants grounds of appeal are but mere mitigation. Some of the grounds were urged in the court before he was sentenced.
7. The appellant pleaded guilty and hence did not waste the court's time. The court took into account the circumstances under which the offence was committed, in that a part from threats to kill, the appellant actually chased the complainant with a panga. The Appellant is remorseful and seeks the court's forgiveness.
8. I note that the trial court erred by not sentencing the appellant on the two charges. It is not clear what the court sentenced the appellant on, the 1<sup>st</sup> or 2<sup>nd</sup> charge. This court must correct that omission.
9. The trial court had called for a presentence report. It was favoaurable to the appellant because the Probation Officer considered the fact that the appellant and complainant are neighbours and need to co-exist.
10. So far, the appellant has already served over one year in prison. Taking into account the fact that he was a first offender, pleaded guilty and the probation
11. officer's report which was favourable, I hereby exercise my discretion, set aside the sentence and sentence the appellant on the two counts to the period already served. He is set at liberty forthwith unless otherwise lawfully held.

**DATED, DELIVERED AND SIGNED AT MIGORI THIS 17<sup>TH</sup> DAY OF NOVEMBER, 2022.**

**R. WENDOH**

**JUDGE**

**Judgment delivered in the presence of:-**

Mr. Mulama for state

Accused present in person

Ms. Nyauke

