



REPUBLIC OF KENYA



**KENYA LAW**  
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**Koech v Republic (Criminal Appeal E084 of 2023)  
[2025] KEHC 2256 (KLR) (13 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 2256 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL APPEAL E084 OF 2023  
AC MRIMA, J  
FEBRUARY 13, 2025**

**BETWEEN**

**ABRAHAM KIPCHOGE KOECH ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the conviction and sentence in Criminal Case No. E3460 of 2023 delivered by Hon. S. Makila (SPM) delivered on 11th December 2023)*

**JUDGMENT**

1. Abraham Kipchoge Koech, the Appellant herein, was charged at the trial Court with two counts. In count 1, he faced the charge of threatening to kill contrary to section 223 of the *Penal Code*. The particulars of the offence were the on the 8<sup>th</sup> day of October 2023 at Kiptenden village in trans-Nzoia East Sub County within trans-Nzoia County without lawful excuse threatened to kill Eunice Chepkoech Tuwei by uttering the words ‘nitakuminus’ while armed with a panga.
2. In count II, the Appellant face the offence of assault causing actual bodily harm contrary to Section 251 of the *Penal Code*. The particulars of the offence were that on the 8<sup>th</sup> day of October 2023 at Kiptenden village in Trans-Nzoia East County within Trans-Nzoia County assaulted Laban Kiplenting Koech thereby occasioning him actual bodily harm.
3. On the hearing date, the Court entered a plea of guilty on both counts on the Appellant’s own admission and convicted him to 7 years imprisonment on Count I and 3 years imprisonment on Count II. The sentences were to run concurrently.
4. In his Petition of Appeal dated 18<sup>th</sup> December 2023, the Appellant urged to be granted a lesser sentence on the following grounds;
  1. That I pleaded guilty at the trial Court.



2. That I am a first offender.
3. That I am remorseful for the offence of alcohol by the time I was committing the offence.
4. That I am the sole breadwinner of my family.
5. In his submissions, he stated that the prosecution threatened him of conviction if he did not plead guilty. It was his further submission that he committed the offence unknowingly and was a first offender. He stated that he pleaded guilty since he was confused. He urged the Court to be merciful since he was remorseful to his parent.
6. On its part, the State submitted that under Section 348 of the *Criminal Procedure Code*, the only available recourse for the Appellant was the legality of the sentence since he pleaded guilty.
7. On that score, the Respondent submitted that the Court considered mitigation and the sentence that was handed down to him was proper and ought not to be interfered with.
8. This being a first appeal, the duty of this Court is to re-consider and to re-evaluate the evidence adduced before the trial Court with a view to arriving at its own independent conclusions and findings (See *Okono vs. Republic* [1972] EA 74).
9. While re-assessing the evidence, this Court is required to keep in mind the fact that it neither saw nor heard the witnesses as they testified before the trial Court. As was observed in *Ajode v. Republic* [2004] KLR 81 is imperative that due allowance is made to that end. I will now reappraise the evidence.
10. The Appellant in essence is challenging the propriety of the plea taking process. In Criminal Appeal 365 of 2011, *John Muendo Musau -vs- Republic* [2013] eKLR, the Court of Appeal, in reference to the decision in *Adan -vs- Republic* discussed the process of plea taking as follows: -
  - (5) On this argument, we wish to state that we have outlined the procedure followed before the trial court at the time of taking the plea. The legal principles to be applied in plea taking in all criminal cases were well enunciated in the locus classicus case of *Adan vs Republic* [1973] EA 445 where the Court held: -
    - i. The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands.
    - ii. The accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded.
    - iii. The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.
    - iv. If the Accused does not agree with the facts or raises any question of his guilt his reply must be recorded and change of plea entered.
    - v. If there is no change of plea a conviction should be recorded and a statement of facts relevant to sentence together with the accused's reply should be recorded."
11. With the foregoing, I now turn to the proceedings before the trial Court. On 26<sup>th</sup> October 2023 when the Appellant was arraigned before Court, he pleaded not guilty to both charges. Accordingly, the case progressed to bail/bond hearing. When Eunice Chepkoech Tuwei, PW1, took the stand on 10<sup>th</sup> December 2023, the Appellant informed the Court that he wished to plead guilty to the offences. The Court then read out the two charges afresh and every element thereof as set out in the particulars and the Appellant responded that he understood. He stated that 'it is true'.



12. The Respondent herein then informed the Court that the Appellant had a previous conviction in Criminal Case No. E1147/2021 in Court 1 where he was sentenced to 6 months on Community Service Order [CSO].
13. In response, the Appellant stated that he drunk a lot and was in deep thoughts. He asked the Court to pardon him.
14. In *Ndede -vs- Republic* [1991] KLR 567, the Court held that the bar to an appeal against a conviction is not absolute. There are circumstances where Court departs from the finding of the trial Court's conviction based on guilty plea. The Learned Judges observed as follows: -

.....This Court held that the Court is not be bound to accept the accused persons admission of truth of the charge of conviction as there may be an unusual circumstance such as injury to the accused, or the accused is confused or there has been inordinate delay in bringing the accused person to court from the date of arrest. In the appeal before us, we reiterate our satisfaction that the plea of guilty was unequivocal....

15. Returning to the case at hand, the record has it that the Appellant took plea on 26<sup>th</sup> October 2023 and the hearing was set for 21<sup>st</sup> November 2023. On the hearing day, the Appellant indicated to the Court his wish to change plea. The Appellant was taken through the process of plea-taking for the second time and I am satisfied that every requirement thereof was fulfilled. As regards the claim that he was confused, there is absolutely nothing on the record to lend credence to that allegation.
16. It is discernible that the Appellant was fairly processed and this Court finds no reason to fault that process. In fact, the trial Court took steps to ensure that the Appellant understood the charges and the consequences of his actions. It is, therefore, this Court's finding that the Appellant's own plea of guilty was unequivocal and cannot be faulted.
17. I now turn to the propriety of the sentence. The offence and punishment of threatening to kill is provided for in section 223 of the *Penal Code* as follows;

223. Threats to kill

1. Any person who without lawful excuse utters, or directly or indirectly causes any person to receive, a threat, whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for ten years.

18. The offence and punishment of assault causing actual bodily harm is provided for in section 251 of the *Penal Code* as follows;

251. Assault causing actual bodily harm

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

19. The trial Court handed down a sentence of imprisonment for 7 years and 3 years for the offences of threatening to kill and assault respectively.
20. The record has it that the trial Court considered the mitigations and the pre-bail report that spoke to the conduct of the Appellant towards his family, her own mother, sibling and the society at large. From a young age, the Appellant seems to have been socially deviant and a source of havoc. The report further showed that the Appellant's family has always lived in fear since he has severally threatened to 'finish' them. More important for this Court is the fact that the Appellant in not a first offender. He was convicted of assaulting his mother and sentenced to community service. Therefore, for the sake of



according to the Appellant an opportunity to be rehabilitated, a custodial sentence was necessary. This Court, hence, finds no need to overturn the sentences on record more so since they run concurrently.

21. As I come to the end of this judgment, I wish to render my unreserved apologies to the parties in this matter for the delay in rendering this decision. The delay was occasioned by the fact that since my transfer from Nairobi, I have been handling matters from the Constitutional & Human Rights Division, Kitale and Kapenguria High Courts. Further, I was appointed as a Member of the Presidential Tribunal investigating the conduct of a Judge in March 2024 and subsequently elected into the Judicial Service Commission thereby mostly being away from the station. Apologies galore.
22. In the end, the whole appeal is found and held to be without merit and is hereby dismissed.
23. It is so ordered.

**DELIVERED, DATED AND SIGNED AT NAIROBI THIS 13<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**A. C. MRIMA**

**JUDGE**

Judgment delivered virtually in the presence of:

Abraham Kipchoge Koech, the Appellant.

Mr. Mugun, Learned Prosecutor instructed by the Director of Public Prosecutions for the Respondent/State.

Chemosop/Duke – Court Assistants.

