



REPUBLIC OF KENYA



**Karani v Republic (Criminal Appeal E009 of 2024)
[2025] KEHC 3482 (KLR) (21 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 3482 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL E009 OF 2024
AC MRIMA, J
MARCH 21, 2025**

BETWEEN

AYUB KARANI APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal arising out of the conviction and sentence of Hon. I. Kabuteh (RM) in Kitale Chief Magistrate’s Court Criminal Case No. 4219 of 2023 delivered on 5 th February 2024)

JUDGMENT

1. Ayub Karani, the Appellant herein, was charged with the offence of threatening to kill contrary to Section 223(1) of the *Penal Code*. The particulars of the offence were that on 13th day of December 2023 at around 1900hrs at Lessos estate in Kwanza Sub-location within Trans-Nzoia County without lawful excuse uttered words “nitakudunga kisu wewe mzee mpaka ukufe” threatening to kill David Esirom.
2. When he was called to plead to the charge, the Appellant initially pleaded not guilty. However, when he was arraigned in Court subsequently, he changed his plea to guilty and was accordingly convicted. In mitigation, he stated that he was drunk at the time and asked for forgiveness. The trial Court considered the Probation Report and handed down a 10-year custodial sentence for reasons among them that the Appellant was a repeat offender and that he was a danger to himself and others.

The Appeal:

3. The Appellant was dissatisfied with his conviction and sentence. Through undated Amended Petition of appeal, he urged this Court to set aside his conviction and sentence on the following grounds:
 1. That I pleaded guilty at the trial



2. That the trial magistrate in fact in convicting I the Appellant without exhibits.
3. That the trial magistrate erred in rejecting my defence
4. That the trial magistrate erred by convicting I the Appellant in shifting the burden of proof to me.
5. That the trial magistrate erred in fact by relying on circumstance evidence.
6. That the trial magistrate erred in convicting on absence of key witnesses before the Court.

The Appellant's submissions:

4. In his written submissions the, Appellant abandoned the foregoing grounds of appeal and instead prayed for a lenient sentence stating that he was remorseful for threatening to kill his father. He urged the Court to review his sentence and be more lenient since he had undergone rehabilitation programmes. It was his case that his family had agreed to forgive him and that he took personal responsibility for the offence and had profound regret and apology. In illuminating the circumstances of the offence, the Appellant stated that it was not heinous as there was no actual violence meted out on the victim.
5. He further stated that there was no use of any weapon in the offence. It was his case that he was young and naïve and lacked wisdom to deal with the life's pressures. He reiterated that granted a chance, he will rehabilitate. He relied on the case of Francis Opondo -vs- Republic (2017) eKLR where it was observed that a Court in meting out a sentence must consider such factors as the nature of the offence, the attitude of the accused person, prevalence of such an offence and the fact that maximum sentence is intended for the worst offenders of the class for which the punishment is provided.
 - a. In conclusion, it was his case that he had rehabilitated, transformed and was ready to be reintegrated back to the society and utilize the skills he learned while in custody. He referred to the Baptismal Certificate from Kitale Protestant Church, Theological Certificate and In-charge of pastoral programme in his ward.

The Respondent's case:

6. The Respondent challenged the appeal through concise written submissions dated 24th July 2024.
7. It was its case that under Section 348 of the *Criminal Procedure Code*, the only ground of appeal on a conviction of guilty plea is an interrogation on legality of the sentence. It was its case that the findings of the trial Court ought to be affirmed.

Analysis:

8. From the foregoing, the only issue for determination is whether the Appellant has made out a case for review of his sentence. The High Court is empowered to review sentences by virtue of its supervisory jurisdiction vested to it under Article 165 of *the Constitution*. It provides as follows: -

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial, or quasi-judicial function, but not over a superior Court.

9. Section 362 of the Criminal procedure Code donates the mandate to the High Court to call for and examine the record of any criminal proceedings before any subordinate court for the purpose of



satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court.

10. The Appellant, having abandoned his grounds of appeal, this Court's jurisdiction is invoked by virtue of Articles 50(2)(q) and 165 of *the Constitution* and Section 362 of the CPC.
11. Before embarking on the process of resentencing, is it important to first highlight the principles behind sentencing generally. In *Thomas Mwambu Wenyi -vs- Republic (2017) eKLR*, the Court of Appeal cited the decision of the Supreme Court of India in *Alister Anthony Pereira -vs- State of Maharashtra* where the Court observed as follows: -

.... Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles: twin objective of sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances. The principle of proportionality in sentencing a crime doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.

12. The objectives of the sentencing as set out by the Judiciary Sentencing Policy Guidelines calls upon a Court to consider the gravity of the offence, the threat of violence against the victim, the nature and type of weapon used by the Applicant to inflict harm among others.
13. The foregoing gives this Court the bounds within which to assess the legality of the Appellant's sentence. The Probation Report considered alongside the section creating an offence offer the Court the platform from which to resentence.
14. This Court has reviewed the proceedings of the trial Court. The Appellant unequivocally conceded to the charge and was convicted on his own guilty plea. In mitigation he stated that he was drunk and promise not to repeat the same offence.
15. The Court requested for a Pre-sentence Report and observed that the accused person was not remorseful and that he had lost respect towards his family members. It also noted that the Appellant was a repeat offender having been previously convicted in Criminal Case 5252/19 and was sentenced to 4 months imprisonment. Further, the village elders remarked that the Appellant was a danger to himself and others. On that basis he was sentenced to 10 years imprisonment.
16. The Court has keenly interacted with the Probation Report. The Appellant's conduct and behaviour from an early age was wayward. The family history background reveals that his parents separated because of his unruly behaviour. His mother has lived in fear since he threatened to kill her. It is indicated that he got into a criminal gang and is known as one of the criminals within the village. The Appellant was expelled from school due to his truant behaviour when he was in class seven. He has caused tension and fear in the community and has no fixed place of abode. He had been arrested three times before the case, subject of this appeal.



17. The victim, who is the Appellant's father stated that the offender has become a menace in the society to a point they, as a family, were threatened with eviction from the community. It is also notable that the Appellant indeed served six months imprisonment for threatening to kill his mother and vowed to kill her upon release from prison. Finally, the community, based on the past incidents believed the Appellant cannot be rehabilitated. He was feared because he walked around armed with a machete and is a bad example to boys. He even had stabbed a neighbour's daughter but survived and the family withdrew the case.
18. There is no doubt the Appellant has turned into a nightmare for both his family and the community at large. He is a threat to the safety of everyone and despite having been imprisoned previously, no rehabilitation was achieved.
19. The offence of threatening to kill is created by Section 223 of the [Penal Code](#) as follows: -

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
20. The discretion inherent in a Court to mete out a lesser sentence in the above section is palpable. Despite the formidable arguments in the Appellant's submissions, this Court is inclined to protecting the society as opposed to taking the risk of granting the Appellant a lesser sentence. That is so because the Appellant has, consistently, demonstrated the inability to live peacefully with his family and the members of the community. This Court is convinced that the trial Court's assessment of the 10-year imprisonment was appropriate, adequate, just and proportionate and commensurate with the conduct of the Appellant. This Court must not interfere.
21. In the premises, this Court finds the appeal to be without merit and is hereby dismissed. The sentence of the trial court is upheld.

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 21ST DAY OF MARCH, 2025.

A. C. MRIMA

JUDGE

Judgment delivered virtually in the presence of:

Ayub Karani, the Appellant in person.

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

Chemosop/Duke – Court Assistant.

