



REPUBLIC OF KENYA



**Wambui v Republic (Criminal Appeal E047 of 2023)
[2025] KEHC 2759 (KLR) (Crim) (6 March 2025) (Judgment)**

Neutral citation: [2025] KEHC 2759 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E047 OF 2023
AB MWAMUYE, J
MARCH 6, 2025**

BETWEEN

KENNETH KAHINDO WAMBUI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an Appeal against the Sentence arising from the judgment and conviction of Hon. M.A Opondo (PM) delivered on 11th November, 2020 in the Chief Magistrate's Court at Makadara in Criminal Case No.1384 of 2015)

JUDGMENT

1. The Appellant, Kenneth Kahendo Wambui, was charged and convicted for the offense of attempted murder contrary to Section 220(a) of the *Penal Code*. The particulars as presented before the trial court indicate that on 29th April 2015, at Githunguri Shopping Centre in Njiru Sub County within Nairobi County, the Appellant attempted unlawfully to cause the death of Shephrah Wambui Maina by assaulting her, dumping her on the road and attempting to run over her with motor vehicle Reg. No. KAT 987K make Nissan Sunny saloon white in colour.
2. At the end of the trial, the Appellant was sentenced to fifteen (15) years imprisonment. Dissatisfied with the sentence, the Appellant has filed this appeal seeking re-sentencing on the grounds that:
 - i. He was a first offender and youthful at the time of the offense.
 - ii. He has since reformed and rehabilitated himself while in custody.
 - iii. The sentence is harsh and excessive in light of the mitigating circumstances.



3. I have carefully considered the Trial Court’s proceedings, the Petition of Appeal, the Appellant’s submissions, the Respondent’s submissions, the authorities cited and law.

4. This being a first appeal, this court is mindful of its duty as 1st appellate court. This duty was well articulated in *David Njuguna Wairimu V Republic* [2010] where the court of appeal held: -

“The duty of the first appellate court is to analyze and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellant court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decisions.

5. Section 354(3)(b) of the *Criminal Procedure Code* grants this court discretion to review and alter a sentence, including increasing or reducing or substituting it with an alternative sentence where appropriate.

6. The principles guiding interference with sentencing by the appellate Court were properly set out in *S vs Malgas* 2001 (1) SACR 469 (SCA) at para 12 where it was held that: -

“A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court...However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as “shocking”, “startling” or “disturbingly inappropriate”

7. Similarly, in *Mokela vs The State* (135/11) [2011] ZASCA 166, the Supreme Court of South Africa held that: -

“It is well-established that sentencing remains pre-eminently within the discretion of the sentencing court. This salutary principle implies that the appeal court does not enjoy *carte blanche* to interfere with sentences which have been properly imposed by a sentencing court. In my view, this includes the terms and conditions imposed by a sentencing court on how or when the sentence is to be served.”

8. These principles governing the appellate court’s discretion to interfere with a sentence were also established in *Ogolla S/O Owuor v R* (1954) EACA 270, where the court held that:

- i. “A sentence will only be altered if the trial court acted on a wrong principle,
- ii. If material factors were overlooked, or
- iii. If the sentence is manifestly excessive given the circumstances.”



9. The case of *Muruatetu & Another v Republic* [2021] KESC 31, mandates individualized sentencing, requiring courts to weigh aggravating and mitigating factors, including age, remorse, and rehabilitation.
10. The Appellant was 26 years old at the time of commission of the offense. The court takes cognizance of the fact that youthful offenders may not always fully contemplate the consequences of their actions due to their age and maturity levels.
11. The fact that he had no previous convictions was acknowledged during trial, and the principle that a first offender should be given an opportunity for rehabilitation is well enshrined in our laws.
12. In *Republic v Mohammed Said* [2019] eKLR, the court emphasized that a custodial sentence should not be the first resort where the offender demonstrates potential for reform and reintegration into society.
13. In *Geoffrey Njuguna Gacara v Republic* [2009] eKLR, the court allowed an appeal against severity of sentence, noting that the sentence imposed was excessive and reducing it to the period already served. Similarly, in *Maringa v Republic* [1985] KLR 594, the court held that sentencing should not only focus on punishment but should also consider the personal circumstances of the offender and the objective of rehabilitation.
14. The Appellant submitted that he has undertaken various rehabilitation programs while in custody, including:
 - i. Bible study courses
 - ii. Vocational training in entrepreneurship and business skills
 - iii. Mental health training including anger management and conflict resolution
15. The principle of rehabilitation as a goal of sentencing was discussed in *Republic v Shadrack Kipkoech Kogo* [2003] eKLR, where the court stated that a reformed offender should be given an opportunity to reintegrate into society rather than being confined in prison.
16. In *Ochieng v Republic* [2006] eKLR, the Court of Appeal reduced a custodial sentence to a non-custodial one, emphasizing that where an offender demonstrates remorse and reform, a custodial sentence may not always be appropriate.
17. The offense of attempted murder carries a maximum penalty of life imprisonment. However, sentencing should be proportionate to the circumstances of the case and the individual offender.
18. In *Benard Kimani Gacheru v Republic* [2002] eKLR, the Court of Appeal reiterated that sentencing should consider mitigating factors and the possibility of reform. The court found that excessive sentences do not always serve the interests of justice. Additionally, where reconciliation has been achieved, and the offender has reformed, the court should lean towards non-custodial sentences to promote restorative justice (See *Republic v Mwasia Mutua & Another* [2018] eKLR).
19. In the present case, the Appellant has demonstrated significant remorse, reconciliation efforts with the complainant, and a commitment to reform. His enrollment and successful completion of rehabilitation programs further reinforce his willingness to reintegrate into society as a responsible citizen.



16. Taking into account the Appellant's age at the time of the offense, his remorse, the steps he has taken towards rehabilitation, and the principles guiding sentencing, this court finds that a custodial sentence is not necessary.
17. Accordingly, I allow the appeal on sentence and make the following orders:
 1. The custodial sentence of fifteen (15) years imprisonment is hereby set aside.
 2. The Appellant is sentenced to serve a period of three (3) years under probation supervision, during which he shall undergo continued rehabilitation and community service as directed by the Probation Office.
 3. The Appellant is to engage in structured counseling programs, including anger management and conflict resolution, as part of his probation conditions.
 4. The Appellant shall not engage in any criminal activity and shall remain of good conduct during the probation period. Any violation of the probation terms shall result in the re-imposition of an appropriate custodial sentence.
 5. The probation officer shall file periodic reports on the Appellant's progress.
 6. Unless otherwise lawfully held, the Appellant is immediately set at liberty and is to be handed over to the Probation Officer.

Orders accordingly. File closed accordingly.

DATED, SIGNED, AND DELIVERED VIRTUALLY THIS 6TH DAY OF MARCH, 2025.

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BAHATI MWAMUYE

JUDGE

