Bett v Republic (Criminal Appeal E058 of 2024)
[2025] KEHC 10059 (KLR) (17 June 2025) (Judgment)

Neutral citation: [2025] KEHC 10059 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAKURU

CRIMINAL APPEAL E058 OF 2024

JM NANG'EA, J

JUNE 17, 2025

BETWEEN

BENARD KIPRONO BETT ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an Appeal against the sentence in Criminal Case No. E1258 of 2024 by the Hon. D. Mosse (PM) at Molo Chief Magistrate's Court delivered on 26th day of June, 2024)

JUDGMENT

1. This Appeal springs from the decision of the Chief Magistrate at Molo (Hon. D. Mosse – Principal Magistrate) in which the Appellant was convicted on his plea of guilty to the charge of threatening to kill contrary to Section 223 (1) of the *Penal Code* and sentenced to thirty (30) years imprisonment. The particulars of the charge laid in the lower court filed No. E1258 of 2024 are that on 1st June 2024 and Sirikwa Location, Kuresoi North Sub County, the accused without lawful excuse, uttered the following words; "*Unipatie Elfu moja au niende na ng'ombe*", "*Nitakuua Na Nikuchomee Nyumba*", threatening to kill Nancy Chepngetich.

2. The Appellant maintained the plea of guilty after the full facts of the case were read out to him. The facts indicate that he differed with his mother, the complainant, from whom he demanded Kshs. 1,000/= or else he would appropriate the family cow. When his mother failed to give him the cow he allegedly moved to take the cow upon which the complainant raised alarm. The complainant's neighbours prevented the Appellant from taking the cow. The Appellant then issued the threat to kill the complainant and burn down her house.

3. The Appellant relied on six (6) grounds of appeal which are condensed into two as hereunder;-

    1. That the learned trial magistrate erred in law and fact by failing to consider and be guided by the Appellant's mitigation statements.

and

2. That the learned trial magistrate meted out a harsh or excessive sentence regard being had to the Appellant's mitigation submissions.

4. The Appellant prays that the appeal be allowed and the sentence quashed or set aside.

5. The principles guiding the court in determination of a first appeal such as the instant one have long been settled in the case of *Okeno v Republic* (1972) EA 32. The court is required to re-assess or re-evaluate the evidence adduced in the lower and arrive at its own conclusion on both maters of fact and law while being mindful that, unlike the trial court, it did not have the benefit of watching the demeanour of witnesses. The court is accordingly guided.

6. The Appellant and the Prosecution Counsel filed written submissions which I have perused together with the record. Citing various judicial determinations including *Kiplimo v Republic* (2025) KEHC 5531(KLR) which involve the same offence, the Appellant prays for a more lenient prison term taking into account all the circumstances of the case.

7. The Appellant attacks the lower court's sentence as illegal, pointing out that the offence charged attracts a maximum sentence of ten (10) years in prison.

8. The Republic concedes that the 30 years prison term handed to the Appellant is harsh and excessive, considering that he chose to plead guilty. The Prosecution Counsel, however, correctly submits referring to the judicial decision in *Shadrack Kipkoech Kogo v Republic* Eldoret Criminal Appeal No. 253 of 2003 that sentencing is generally in the discretion of the court but an appellate court may interfere if the lower misdirects itself in some material particulars. It is suggested that a more lenient sentence be meted out instead.

9. The prosecution Counsel otherwise thinks that the plea of guilty was lawfully entered as prescribed in the famous case of *Adan v Republic* (1973) EA 445 among other superior court decisions.

10. The record shows that when the Appellant was called upon to offer mitigation submissions after his conviction he only stated thus:-

> " I ask court for pardon."

The trial court thereafter called for a pre-sentence report from the Probation Officer which was stated to have been considered before the prison sentence of thirty (30) years was imposed.

11. The Probation Officer's Report dated 26/6/2024 notes inter alia that the Appellant was remorseful but the complainant wanted a harsh sentence against him because of his bad character. On account of these factors among others, the Probation Officer thought that a non-custodial sentence was not suitable for the offender, and so recommended to the trial court.

12. The Appellant is only aggrieved with the sentence handed by the lower court. Indeed an appeal against conviction would not lie owing to the plea of guilty. Section 223(1) of the *Penal Code* under which the charge was brought is in the following terms;-

> " Any person who without lawful excuse utters or directly 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."

13. Clearly, the 30 (thirty) years sentence imposed by the lower court is illegal as it far exceeds the maximum limit of 10 (ten) years prescribed by law and warrants review by this court.

14. It is noted that the Appellant had no previous criminal records and had chosen to plead guilty, rather than forcing a full trial with attendant costs. There are no aggravating circumstances based on the record. The 30 (thirty) years prison term meted out by the lower court is set aside and substituted with the period of imprisonment the Appellant has already served. Consequently, he is ordered discharged unless he is otherwise lawfully held.

J. M. NANG'EA, JUDGE.

JUDGEMENT DELIVERED VIRTUALLY ON THIS 17TH DAY OF JUNE, 2025 IN THE PRESENCE OF;

Mr. Wakasyaka for the DPP

Appellant, present (online)

Court Assistant, Jeniffer

J. M. NANG'EA, JUDGE.