Mwangi v Republic (Criminal Appeal E007 of 2025)
[2025] KEHC 9457 (KLR) (23 June 2025) (Judgment)

Neutral citation: [2025] KEHC 9457 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NAIVASHA

CRIMINAL APPEAL E007 OF 2025

GL NZIOKA, J

JUNE 23, 2025

BETWEEN

JOHN GITHONGA MWANGI ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal against the conviction and sentence in MCCR E148 of 2025 by Hon. E. Kelly (PM) at Naivasha Chief Magistrate's Court delivered on the 5th day of February, 2025)

JUDGMENT

1. The appellant, John Githongo Mwangi, was arraigned before the Chief Magistrate's court charged vide CMCC No. E148 of 2025 at Naivasha with the offence of grievous harm contrary to section 234 of the *Penal Code* (Cap 63) Laws of Kenya.

2. The particulars of the charge are that on the 26th day of December, 2024 at Karagita Estate in Naivasha Sub-county within Nakuru County unlawfully did grievous harm to Samuel Thuo Gitau by hitting him with a metal on his left knee and chest.

3. The charge was read to the appellant and he pleaded guilty thereto. The facts were then read to him and he confirmed that the same were true and correct. He was then convicted on his own plea of guilty.

4. Subsequently, the prosecution provided the record of the appellant, treating him as a first offender. In mitigation, the appellant prayed for forgiveness. The trial court then sentenced the appellant to twenty (20) years in prison.

5. However, the appellant is aggrieved by the conviction and sentence and appeals against it on the following grounds verbatim reproduced:

    a. That the learned trial magistrate erred in law and fact by conducting unfair hearings contrary to Article 25(c), 27(1)(2) and 50(2)(a) & (c) of the *Constitution*.

b. That the learned magistrate erred in law and fact by failing to find that the plea was equivocal.

c. That the learned trial magistrate erred in law and fact by awarding a sentence that is not only harsh but also excessive.

d. That the sentence was harsh and excessive.

e. That he wishes to be present during the hearing and determination of this appeal.

6. However, the appeal was opposed by the respondent vide grounds of opposition dated 18th June, 2025 in which the respondent states;

a. That the accused unequivocally agreed to have committed the offence after the charge was read to him in a language he can clearly understand.

b. That the imposed sentence is sufficient and adequate as per the offence committed and enough as provided in the Kenyan Laws.

c. That the trial court sufficiently considered the appellant's grounds of mitigation.

d. That the Honourable court be pleased to dismiss the appeal and uphold both the conviction and the sentence.

7. The appeal was disposed of vide filing of submissions. The appellant submitted that, the trial was conducted in a manner that violated his right to a fair hearing as guaranteed under Article 50(2) of the *Constitution*. That he was arraigned before the trial court on 5th February 2025 on which day he took plea, pleaded guilty and was convicted. However, he was not supplied with the evidence that the prosecution intended to rely on to enable him prepare his defence after understanding the charges against him as guaranteed under Article 50(2)(j) of the *Constitution* nor was he afforded adequate time and facilities to prepare his defence as provided for under Article 50(2)(c).

8. The appellant argued that, his right to a fair trial having been violated the plea of guilty was equivocal. That a trial court has an oversight role under Article 50(1) of the *Constitution* to ensure an accused person is aware of his rights and is duly prepared to plead to the charges against him especially where such an accused is unrepresented.

9. He relied on the case of Juma & another vs Attorney General (2003) eKLR where the High Court affirmed the right of a fair hearing as an elementary principle of the administration of justice under the *Constitution* of Kenya.

10. The appellant further submitted that the ingredients of the offence were not proved. He cited section 234 of the *Penal Code* and stated that the ingredients of the offence are; that the victim sustained grievous harm, the harm occasioned was unlawful, and the assailant was positively identified.

11. However, he conceded that the prosecution produced the P3 form, but challenged its veracity stating that it was filled on 29th January 2024, which was almost a year before the alleged assault on 26th December 2024, and report to the police on 27th December 2024.

12. The appellant submitted that the sentence imposed by the trial court is harsh and excessive. He relied on Article 50 (2)(p) of the *Constitution* that provides an accused has the right to benefit from the least severe punishment and proposed that a non-custodial sentence be considered.

13. The appellant faulted the trial Magistrate for failing to take into consideration his mitigation that he is a first offender, he was remorseful and only 20 years old at the time of the offence. Furthermore, that the trial Magistrate failed to call for a pre-sentence report and victim impact statement.

14. However, the respondent vide submissions dated 18th June, 2025 argued that none of the grounds of appeal relates to the conviction and that the only issue in dispute is the sentence. That an appellate court will only interfere with a sentence by the trial court where there exists sufficient circumstance entitling it to vary the order.

15. The case of, Nelson vs Republic [1970] E.A 599 citing Ogalo Son of Owuora vs R (1954) 21 EACA 270 was relied where the court stated that an appellate court will not alter a sentence on mere ground that if it was trying the appellant it might have passed a different sentence and will only interfere with the same where it is evident that the trial court acted on a wrong principle or overlooked a material factor, or where the sentence is manifestly excessive in view of the circumstances.

16. The respondent relied on section 26(2) of the *Penal Code* which states that where an offence provides that a person is liable to imprisonment for life or any other period, the trial court has discretion to pass a shorter period of imprisonment. The respondent submitted the sentence of twenty (20) years imprisonment imposed by the trial court is commensurate with the offence the appellant is charged with, the court having considered all factors.

17. At the conclusion of the case, it is noteworthy that the role of the first appellant court is to re-evaluate the evidence adduced in the trial court afresh and arrive at its own conclusion taking into account the fact that the court did not have the benefit of the demeanour of the witness.

18. In this regard, the court thus stated in the case of Okeno vs. Republic (1972) EA 32; -

> " An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandya v. R., [1957] E. A. 336) and to the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusions. (Shantilal M. Ruwala v. R., [1957] E.A. 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's findings and conclusions; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see Peters v. Sunday Post, [1958] E. A. 424."

19. To revert back to this matter, the appeal is considered in the light of the materials placed before the court and I find that the main issue to consider is whether:

    a. The plea of guilty entered for the appellant was unequivocal

    b. The sentence imposed was lawful, harsh or excessive.

20. As regards the 1st issue, the law on plea taking is settled as per the provisions of section 207 of the *Criminal Procedure Code* which provide that: -

> " (1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he pleads not guilty, guilty or guilty subject to a plea agreement.
>
> (2) If the accused person admits the truth of the charge otherwise than by a plea agreement his admission shall be recorded as nearly as possible in the words

used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary:

> Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded".

21. Similarly, the Court of Appeal in the case of; Adan v Republic [1973] EA 445 held that: -

> " (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 the facts relevant to sentence together with the accused's reply should be recorded."

22. In the instant matter, the record of the trial court indicates that the charge and particulars thereof were read to the appellant in a language he understood and he responded in Kiswahili "Ni ukweli". He could not respond if he did not understand. In fact, the court informed him of the consequences of entering a plea of guilty and he still responded "Ni Kweli" translated "It is true".

23. The facts were then read to him and he still pleaded guilty and/or accepted the same to be correct. He was then convicted on his own plea of guilty. As such, I find no argument in the grounds of appeal that the plea was not unequivocal. Further, the initial grounds filed do not fault the trial court on the conviction but relate to the sentence.

24. Furthermore, the submissions by the appellant to the effect that he was not accorded a fair hearing as envisaged under Article 50 of the *Constitution* of Kenya, is not tenable as he pleaded guilty to the charges negating a full hearing. Pursuant to the aforesaid, I uphold the conviction.

25. As regards sentence, I note that the offence of grievous harm is provided for under Section 234 of the *Penal Code* which states;

> Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.

26. It is a felony punishable by life imprisonment. The gravity of the sentence speaks to the seriousness of the offence. Grievous harm is defined as serious physical harm not just minor injuries. The sentence meted out will vary depending on the circumstances of the case, such as the extent of the injuries and the offender's intent.

27. To revert back to this matter, I note that the facts read out to the appellant herein are scanty. For an accused person to be sentenced on such a serious offence and a prolonged period of twenty (20) years, the circumstances of the offence should be well spelt out. It is not clear from the facts herein how the

appellant and complainant came into contact, what informed the offence and/or the motive and/or how the appellant was arrested. These facts are the ones that will clearly assist to determine the sentence.

28. Furthermore, the appellant was treated as a first offender and he offered mitigation but it is not evident from the court record whether the trial court considered both the mitigation and/or the record of the appellant basically being a first offender. Similarly, the reasons for imposing a custodial sentence of twenty (20) years are not evident on record. Finally, depending on the relationship between the parties, the motive for the offence and the circumstances of the case, this would have been an appropriate call for a pre-sentence report.

29. However, I have considered the injuries sustained by the complainant. In that regard, P3 form produced indicates that the complainant suffered pain in the left knee and is not able to use left lower limbs. Further, the X-ray of left tibia and fibula revealed proximal fibular fracture. The injuries were classified as grievous harm. The P3 form indicated the treatment given as "analgesics IC". No further treatment is stated including the management of the fracture.

30. Pursuant to the aforesaid and considering in particular the fact that the appellant is a first offender, sought for forgiveness and the objectives of sentencing which includes both deterrence and rehabilitation and in the absence of any other information vide a pre-sentence report that can assist the court doing the best given circumstances of the case, I set aside the sentence of twenty (20) years and substitute it with a custodial sentence of ten (10) years. The sentence shall run from the date of conviction in the trial court.

31. It is so ordered.

DATED, DELIVERED AND SIGNED THIS 23RD DAY OF JUNE 2025

GRACE L. NZIOKA

JUDGE

In the presence of:

The appellant present virtually

Ms. Chepkonga for the respondent

Ms. Hannah: court assistant