



REPUBLIC OF KENYA



KENYA LAW
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**Ngeno v Republic (Criminal Appeal E020 of 2024)
[2025] KEHC 9211 (KLR) (12 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 9211 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E020 OF 2024**

JR KARANJA, J

JUNE 12, 2025

BETWEEN

VICTOR KIPLANGAT NGENO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against both conviction and sentence of seven [7] years for the offence of Assault Contrary to Section 251 of the Penal Code on Judgment delivered on 22nd July 2022 by Senior Resident Magistrate Hon. E. W. KARANI)

JUDGMENT

1. The Appellant, Victor Kiplangat Ngeno alias Evance, appeared before the Senior Resident Magistrate at Kericho charged with assaulting a police officer in due execution of duty, Contrary to Section 103[a] of the [National Police Service Act](#) No. 11A of 2011, in that on the 1st June 2021 at about 19:30hours at Maso Village Kericho East within Kericho County he unlawfully assaulted No. 235303 PC. Nicholas Rop, a police officer, who was at the time in due execution of his duty in arresting the appellant for the offences of gang rape and stealing.
2. After a full trial, the Appellant was convicted and sentenced to seven [7] years imprisonment. He was however, aggrieved by the conviction and sentence and preferred the present appeal on grounds set out in his petition of appeal in which he complains generally that his conviction was against the weight of the evidence and that the trial court disregarded his defence. He also complains that the sentence imposed upon him was harsh and excessive in the circumstances of the case. He therefore urged this court to allow the appeal and set him at liberty.
3. The appeal which was canvassed by written submissions was opposed by the State/Respondent. While the Appellant appeared in person at the hearing of the appeal, the State/ Respondent was represented by the Office of the Director of Public Prosecution [ODPP].



Being a first appeal, this court had the obligation to revisit the evidence and draw its own conclusions bearing in mind that the trial court had the advantage of seeing and bearing the witnesses.

4. In brief, the prosecution case was that on the material date at about 7:00pm the Complainant Police Officer Nicholas Rop [PW1] was at his house when he was assigned the duty to arrest the Appellant for having committed the offence of gang rape. He then proceeded to the police station at Brooke area and with PC Timothy Maina [PW2] they proceeded to effect the arrest at Maso area where they found the Appellant and introduced themselves as police officers.
5. The Appellant resisted arrest and turned violent. He fought the police officers and in the process bit the Complainant on his right ear and right shoulder. Members of public called for reinforcement and PC Vincent Muluka [PW3] proceeded to the scene accompanied by PC. Godfrey Shikuli Misashi [PW4] and CPL. Antony Odongo [PW5]. The Appellant was eventually contained, subdued and arrested.
6. The Complainant [PW1] later proceeded to Kericho County Referral Hospital where he was examined by a medical officer, Nancy Wendot [PW6] who compiled and signed the necessary police medical form – P3 Form [P. Exhibit 3] which showed that he was maimed and suffered loss of part of the affected ear as a result of the assault against him by the Appellant.
7. The defence case was a denial and an indication that the Appellant was defending himself against being arrested by pillion passengers of a Motor Cycle who only identified themselves as police officers when his father appeared at the scene and asked him to be calm and surrender to the police.
8. The defence witness, Festus Kiprotich [DW1], indicated that two people alighted from a motor cycle and jumped on the Appellant without identifying themselves as police officers. He confirmed that the Appellant put up a struggle with the police officers as they attempted to arrest him. He [Appellant] eventually gave in after his father appeared at the scene.
9. After considering the evidence in its totality, the trial court concluded that the charge had been proved against the Appellant beyond reasonable doubt. He was accordingly convicted of the charge.

This court, having reconsidered the evidence forms the opinion that the necessary ingredients of the charge as provided for under Section 103[a] of the *National Police Service Act* No. 11[A] of 2011, were fully established and proved against the Appellant by the very overwhelming and credible evidence presented by the prosecution witnesses who were mostly colleague police officers of the Complainant.

10. There was no evidence or suggestion that the witnesses were biased against the Appellant who did not actually deny that he resisted arrest and in the process bit the Complainants right ear lobe and caused him to suffer serious bodily injury. The defence by the Appellant that the Complainant and his colleagues did not introduce themselves as police officer was of no consequences as he deliberately and unlawfully set out to resist arrest and assault persons who were simply executing their lawful mandate of enforcing the law by arresting the Appellant pursuant to a Criminal Complaint made against him to the police.
11. Indeed, the prosecution evidence was sufficient, credible and cogent enough in proving that the Appellant acted contrary to the provisions of the *National Police Service Act*, 2011 which under Section 103 [a] provides that: -

“ Any person who: -

- (a) Assaults, resists or willfully obstructs a police officer in the due execution of the police officer’s duties,



Commits an offence and shall be liable on conviction to a fine not exceeding one, million shillings or to imprisonment for a term not exceeding ten years, or to both.”

12. This court is thus satisfied that the Appellant’s conviction by the trial court was lawful and proper and is hereby affirmed with the result that the grounds in support of the appeal as fortified by the Appellant’s submissions are overruled and dismissed.
13. On the sentence meted out against the Appellant i.e seven [7] years imprisonment, it was lawful but rather excessive for a remorseful first offender. Consequently, the sentence is hereby set aside and substituted for a sentence of three [3] years imprisonment. Otherwise, the appeal is largely dismissed.

DELIVERED AND DATED THIS 12TH DAY OF JUNE 2025

HON. J. R. KARANJAH,

JUDGE

