



**Kichokola v Republic (Criminal Appeal E008 of 2025)
[2025] KEHC 9481 (KLR) (2 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 9481 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL APPEAL E008 OF 2025
AN ONGERI, J
JULY 2, 2025**

BETWEEN

FREDRICK KICHOKOLA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of Hon. D. Wangeci (SPM) in Wundanyi
Criminal Case No. E440 of 2023 delivered on 22nd February 2024)*

JUDGMENT

1. The Appellant pleaded guilty to a charge of grievous harm contrary to Section 234 of the [Penal Code](#) and he was sentenced to ten [10] years imprisonment.
2. The facts of the case were as follows:-

On 28/9/2023 within Mgange Dawida Sub Location, the complainant Delfina Righa while asleep the accused who is her son Fredrick Kichokola woke her up and demanded to be served with food claiming to be very hungry. When the complainant refused, the accused got angry and picked a stick and beat up his mother causing her grievous harm by striking her on the left hand occasioning her an open fracture. She called for help and members of public came to her rescue. The Accused person was apprehended tied up with ropes and escorted to Mgange police station. The accused person was booked into the police cells. She was referred to Mgange Nyika for first aid and received further treatment at Wesu hospital. She was issued with a P3 form filed at same facility. Statements recorded and accused later charged. I produce the P3 form filled at Wesu hospital on 28.9.2023 as PEX.1, treatment notes for treatment received at Mgange Nyika in the same booklet as well as Wesu hospital PEX.2 on 28.9.2023.
3. The Appellant has appealed to this court on the following grounds:-
 - i. That I pleaded guilty to the preferred charges and still remain the same.



- ii. That I am remorseful hence seeking the honourable court to grant me a second chance.
 - iii. That further grounds shall be adduced at the hearing of this appeal.
 - iv. That if my plight is considered, I promise myself before this court that I will be a law abiding citizen and will never commit any beastly act upon my life again.
 - v. That I pray to be supplied with the record of trial proceedings and the judgement to enable me prepare for the hearing of my appeal.
4. The Appellant having pleaded guilty to the charge has no right of appeal except on the sentence.
 5. The appellant, a first-time offender convicted of grievous harm under section 234 of the *Penal Code*, appeals for a reduction of his 10-year sentence, arguing it is excessively harsh and fails to align with principles of fair trial and proportionality.
 6. He emphasized that mitigation, though not constitutionally enshrined, is vital to ensuring a just sentence reflective of the offender's circumstances.
 7. The appellant expressed deep remorse, attributing the offense to intoxication and a momentary lapse of judgment, and highlights his youth, lack of prior criminal record, and the transformative impact of imprisonment.
 8. He said that he has undergone counseling and spiritual growth in prison, pledging to reform and contribute positively to society by mentoring others if granted leniency.
 9. Citing the case of *Josphine Arrisol v Republic* [1957], he argued that lengthy sentences for first offenders are unjust.
 10. The appellant seeks either a non-custodial sentence or acquittal, assuring the court of his rehabilitation and commitment to lawful conduct, and appeals for mercy to rebuild his life as an orphan with no support system.
 11. He concluded by urging the court to reconsider the sentence as disproportionate to his culpability.
 12. The respondent submitted that the trial court's conviction and sentencing of the appellant were just and properly conducted.
 13. That the appellant was initially charged with grievous harm under Section 234 of Kenya's *Penal Code* and pleaded not guilty before later choosing to change his plea to guilty.
 14. That the trial court followed the correct legal procedure for recording a guilty plea, as established in *Adan v Republic* [1973], ensuring the charge and its elements were explained to the appellant in a language he understood, his responses were accurately recorded, and the facts of the case were confirmed by him before conviction.
 15. The respondent cited *Alexander Lukoye Malika vs. Republic* [2015] to emphasize that an appellate court should only interfere with a guilty plea if it was ambiguous, mistaken, or legally invalid—none of which apply here.
 16. The appellant's plea change on 22.02.2024 was voluntary, the facts were admitted, and due process was followed, including allowing him to mitigate before sentencing him to 10 years' imprisonment.
 17. Consequently, the respondent urged the court to uphold the trial court's judgment as lawful and sound.



18. The sole issue for determination is whether the sentence of 10 years is excessive.
19. I have carefully considered the appeal, the submissions by both parties, and the relevant legal framework, I find that the sentence of 10 years imprisonment imposed on the Appellant for the offense of grievous harm under Section 234 of the [Penal Code](#) was manifestly excessive in the circumstances of this case.
20. The Appellant, a first-time offender, pleaded guilty to the charge, expressed genuine remorse, and attributed his actions to intoxication and a momentary lapse in judgment.
21. While the offense was undoubtedly serious, involving violence against his own mother, the principles of sentencing under Kenyan law require proportionality, rehabilitation, and consideration of mitigating factors.
22. In [Joseph Kaberia Kabinga & 11 Others v Attorney General](#) [2016] eKLR, the High Court emphasized that sentencing must be individualized, taking into account the offender's circumstances, the nature of the offense, and the need for deterrence without being unduly harsh.
23. Similarly, in [Shadrack Kipkoech Kogo v Republic](#) [2003] eKLR, the Court of Appeal held that a sentence should be commensurate with the moral blameworthiness of the offender and the harm caused, while leaving room for reform.
24. The Appellant's youth, lack of prior criminal record, and demonstrated remorse are significant mitigating factors that were not adequately considered by the trial court.
25. Furthermore, the case of [Josphine Arrisol v Republic](#) [1957], relied upon by the Appellant, supports the proposition that first-time offenders should not be subjected to disproportionately lengthy sentences where rehabilitation is a viable alternative.
26. The Appellant has already undergone counseling and spiritual growth during his incarceration, reinforcing his potential for reintegration into society.
27. While the offense of grievous harm carries a maximum sentence of life imprisonment, the circumstances of this case do not warrant a sentence as severe as 10 years.
28. A more appropriate sentence should be meted, considering the time already served, the Appellant's mitigation, and the need for justice to be tempered with mercy.
29. Consequently, I allow the appeal on sentence, set aside the 10-year imprisonment term, and direct the probation to file another presentence report to enable this court met an appropriate sentence.
30. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 2ND DAY OF JULY 2025 VIRTUALLY VIA MT AT VOI HIGH COURT.

ASENATH ONGERI

JUDGE.

In the presence of:-

Court Assistant: Millicent

Prosecutor: Ms. Kanyuira

Appellant

