



**Republic v Cheserem & 2 others (Criminal Appeal E003 of 2024)  
[2025] KEHC 10972 (KLR) (24 July 2025) (Judgment)**

Neutral citation: [2025] KEHC 10972 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL APPEAL E003 OF 2024  
RB NGETICH, J  
JULY 24, 2025**

**BETWEEN**

**REPUBLIC ..... APPELLANT**

**AND**

**LAWI CHESEREM ..... 1<sup>ST</sup> RESPONDENT**

**EZEKIEL CHESEREM ..... 2<sup>ND</sup> RESPONDENT**

**LUKA CHESEREM ..... 3<sup>RD</sup> RESPONDENT**

*(Being an appeal from the decision of the Honourable Principal Magistrate Carolyne.T Ateya in criminal case No.E20 OF 2023 delivered on the 20th February,2024 at Marigat court)*

**JUDGMENT**

1. The Respondents herein were jointly and severally charged and convicted of the offence of assault causing actual bodily harm contrary to section 251 of the [Penal Code](#) and sentenced to pay a fine of Kshs 10,000 or in default serve a term of 3 months imprisonment.
2. The particulars of the offence were that the Respondents on the 21<sup>st</sup> day of October,2023, at around 1830hours, at Parkarine Village Lororo Location in Baringo South Sub- County within Baringo County, jointly unlawfully assaulted John Seguton thereby occasioning him actual bodily harm.
3. The Respondents denied the charge and the matter was fixed for full trial with the prosecution summoning 6 witnesses in supported of the charges facing the accused. By judgement delivered on the 20<sup>th</sup> February,2024 the trial court found the accused persons jointly guilty of the offence of assault as charged and convicted the and on the 20<sup>th</sup> February, 2024 sentenced each accused to pay a fine of Kshs.10,000/=in default, 3 months imprisonment.



4. The appellant has filed the Petition of Appeal against sentence. The appellant appeals against sentence on the following grounds:-
  - i. The Honourable Magistrate erred in law and fact by sentencing the respondents to serve 3 months imprisonment and or pay a fine of Kshs,10,000/= each, an extremely lenient sentence in comparison to the gravity of the offence committed and contrary to the evidence tendered by the appellants witnesses.
  - ii. The Honourable Magistrate erred in law and fact by meting sentence which is extremely lenient without considering the appellant's evidence, the manner in which the offence was committed and contrary to the sentencing guidelines.
  - iii. That the appeal has high chances of success.
5. The appellant prays this court:-
  - a. That the appeal be allowed.
  - b. That the sentence be set aside.
  - c. That the honourable court be pleased to enhance the sentence.
6. The appeal was admitted to hearing on the 10<sup>th</sup> March,2025 and the court directed that the appeal to proceed by way of written submissions.

### **Appellant's Submissions**

7. The Appellant submits that the respondents were tried in the subordinate court for the offence of Assault Causing Actual bodily harm contrary to section 251 of the [Penal Code](#).
8. That the trial court having heard and considered the evidence of the Prosecution witnesses, rightfully convicted the respondents for the offence of assault and sentenced each one of them to pay a fine of 10,000/= or in default to serve three months in custody.
9. It is submitted that the sentence meted to the respondents was manifestly lenient and so they submit Section 251 of the [Penal Code](#) provides:

Any person who commits an assault occasioning bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.
10. That in the case of *S vs Malgas* 2001 (1) SACR 469 (SCA) at Paragraph 12, the court outlined the principles guiding interference with sentencing by the appellate court.
11. They submit that it may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have been imposed had it been the trial court is so marked that it can properly be described as "shocking", "startling" or disturbingly inappropriate".
12. They submit that the sentence of 3 months is disturbingly inappropriate considering the injuries suffered by the victim.
13. That this court's duty is laid out under section 379 of the [Criminal Procedure Code](#) and its jurisdiction limited to matters of Law as pronounced in the case of *David Njuguna Wairimu Republic Vs. (2010) eKLR*.
14. They submit that the Prosecution proved beyond reasonable doubt the aggravating factors which the court took into consideration in finding the respondents guilty of the offence of Assault, however, the



- trial court misapplied the provisions of the law in particular section 251 of the of the penal code and accorded the respondents a lenient sentence.
15. They submit that although sentencing is a preserve and discretion of the trial court, the same must be exercised judiciously. That In the present case, the trial court did not consider the harm suffered by the victim that would then guide the court in meting out a proportionate sentence.
  16. It is submitted that according to the sentencing policy guidelines 2016, the trial court ought to apply the principle of proportionality. That the victim was cut on the head and was stitched (Pg 25 line 13). That the respondents did not show any remorse nor did they approach the complainant for reconciliation and it is only after they were convicted that they asked the court for a chance to go and seek reconciliation.
  17. They submit that the trial court in passing its sentence stated, "Given the circumstances of the case and the fact that the accused persons have been out of bond with no complaints from the complainants' That the court did not delve into the circumstances warranting the sentence apart from just stating in the circumstances.
  18. That Secondly, in passing the lenient sentence, they submit that the trial court relied on a wrong principle that the accused persons (respondents) herein had been out on bond with no complaints from the complainant.
  19. It is their humble submission that the court failed to consider relevant factors including the severity of the offence in passing its sentence and thereby passed a lenient sentence.
  20. They rely in the case of Republic Vs Nicholas Wambogo (2022) eKLR where the court held that where the trial court did not consider relevant factors in passing a lenient sentence then that amounts to a grave error of principle.
  21. They urged this honourable court to find that the sentence passed by the trial was not proper and urge that the same is enhanced.

### **Respondent's Submissions**

22. The Respondents submits that before addressing the pertinent issue for determination which is whether the court meted out a lenient sentence to the respondents, it is imperative that a background of what transpired on 21<sup>st</sup> October 2022 at parkarren village and/or the circumcision shrine which led to the appellant and/or the respondents being charged with affray in kabarnet Criminal case No. E225 of 2022 Republic=vs= Jonh Seguton and 3 Others and later the respondents being charged with assault.
23. They submit that on or about the 21<sup>st</sup> October 2022 the complainant and/or the appellant herein together with his friends who subscribe to tugen circumcision rites went and maliciously uncovered charcoal belonging to the respondents who subscribe to Kipnandi Circumcision rites.
24. That when the respondents went back to check on the progress of their charcoal, they found that it had been uncovered and was burning into ashes. They then covered it and inquired who had uncovered them and they were told that the appellant and his witnesses in the lower court case had done it.
25. That after covering, they stayed there for a while and shortly thereafter, the complainant and the witnesses went back and attempted to uncover them again and a confrontation ensued wherein the appellant and his witnesses assaulted the respondents on the basis that they had desecrated their shrine. In self defence the respondents repulsed them.



26. That the appellant and the respondents reported their respective assault against each other at Marigat police station wherein they were issued with P3 forms for assault. The appellant and his witnesses and the respondents herein were charged with affray in Kabarnet cg case No. E225 of 2022 as aforesaid wherein the appellant was the 1<sup>st</sup> accused, PW2, the 2nd accused while the 1<sup>st</sup> and 3<sup>rd</sup> respondents the 3<sup>rd</sup> and 4<sup>th</sup> accused respectively.
27. That all the accused denied the charge which was that on the 21<sup>st</sup> October 2022 not 21st October 2023 as depicted in the present charge sheet, the appellant and the respondents had fought in a public place at parkarren village.
28. They submit that before the matter could be heard the elders and the accused sought leave from court to settle the dispute out of court as the issue which led to the fight over arose from a dispute over a circumcision shrine.
29. That shortly thereafter the appellant and the respondents also wrote to the court and informed it that they had reconciled. However, for unexplained reason, the prosecution withdrew the charge under section 87A instead of 204 as the parties had reconciled.
30. That the respondents believed that the issue had been amicable settled. However, since there was still a simmering dispute in court in respect of the ownership of the shrine pitting the parents of the respondents and the appellant and those who subscribed to tugen circumcision rites, the appellant was urged to press charges against the respondents.
31. That Consequently, charges were proffered against the respondents for allegedly assaulting the appellant yet he had instigated the assault in the 1<sup>st</sup> instance.
32. That the respondents appear to have been labouring under the mistaken believe that the matter was the same affray matter hence they did not cross examined the appellant and his witnesses effectively and/or tender any testimony as to what transpired on 21<sup>st</sup> October 2022, instead they tendered an apology.
33. That consequently, the respondents were convicted on the basis of failure to controvert the appellants evidence and sentenced to pay a fine of Kshs. 10,000/= and/or serve 3 months imprisonment which in all circumstances was a fair and just sentence, in that the honorable court had handled the affray matter and was aware of the circumstances under which it was withdrawn.
34. That they have set out the forgoing background not because they think it will persuade the court in evaluation of the sentence, but for it to appreciate that the circumstance obtaining do not rise to a level to justify enhancement of the sentence.
35. They submit that the sentence was fair and just in the circumstances as aforesaid. However, the parties propping the appellant felt that a maximum sentence ought to be exerted against the respondents to force their parents to abandon their claim on the purported shrine.
36. That the issue for determination is whether the sentence meted out against the respondents was lenient and/or contrary to the sentence guidelines, in submitting they place reliance in Narok Criminal Appeal 05 Of 2020 William Kiprotich Cheruiyot Vs Republic and by the Supreme Court of India in State of M.P. vs Bablu Natt 12009 f 2S. C. C 272 Para 13 that `the principle governing imposition of punishment would depend upon the facts and circumstances of each case” and also Alister Anthony Pareira vs State of Maharashtra, [ 20121 2 S. C. C 648 Para 69 that: is an important task in the matters of crime. One of the prime objectives of the criminal law is and imposition of an appropriate, adequate, proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straightjacket formula for sentencing an accused on proof of



crime. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep the gravity of the crime, motive of the crime, nature of the offence and all other attendant circumstances"

37. That in the instant case, the appellant and the respondents had been charged with affray in Kabarnet criminal case no. E225 of 2022 for fighting in public which was withdrawn after the parties sought forgiveness and/or reconciliation before the same court which meted out the sentence in, the present case the subject of this appeal. That Consequently the court was aware that the assault of the Appellant by the Respondents if any was not intentional and/or that the Respondents harbored no intentions of injuring the Appellant.
38. That the court was also aware that the appellant had confronted the respondents over an alleged desecration of the shrine. That the elders had also written to the court seeking forgiveness on behalf of the parties in the aforesaid case.
39. They content that the aforesaid consideration by the Learned trial magistrate were not extraneous or irrelevant factors as the assault case arose out of the same transaction as the affray case hence the court was aware that the appellant was one of the instigators of the fight which took place on 21<sup>st</sup> October 2022 leading to his injuries and/or that he was the author of his misfortune.
40. That further, the court took into account the respondent's mitigation, good behavior, age and the fact that they are neighbours with the appellant. That it is clear from the foregoing authorities that there is no specific formular of attaining an appropriate sentence as each case depends on its facts and circumstances.
41. That they have set out in detail the circumstances and the facts which persuaded the honourable court in meting out the aforesaid sentence and submit that the trial court exercised its discretion judicially in meting out the sentence in that the parties had reconciled and/or forgiven each other on affray case only for the appellant to renege on the reconciliation and exploit the withdrawal of the case under section 87A to the detriment of the respondents. They therefore submit that the sentence was appropriate and in accordance with the sentence guide lines and the appeal ought to be dismissed.

### **Analysis and Determination**

42. As the first appellate court, my duty is to re-evaluate and analyze the evidence afresh, giving due consideration to the trial court's opportunity to observe the witnesses' demeanour, in accordance with the principle laid down in *Okeno v R* (1972) EA 32.
43. In view of the above, I have perused and considered evidence adduced before the trial court and wish to consider whether the sentence imposed against the respondents was so manifestly lenient as to warrant interference and enhancement by this appellate court.
44. The Legal Principles governing Sentencing on Appeal is that sentencing is within the discretion of the trial court. An appellate court may only interfere where:- The trial court acted on a wrong principle, The sentence is either manifestly excessive or The sentence is patently inadequate (*Republic v Mohamedali Jamal* (1948) EACA).
45. Additionally, under Section 251 of the [Penal Code](#), the maximum sentence for the offence of assault causing actual bodily harm is five (5) years imprisonment. The Sentencing Policy Guidelines (2016) emphasize proportionality, gravity of harm, aggravating and mitigating circumstances.



46. In the present case, the trial court convicted the respondents for assault under Section 251 of the [Penal Code](#) and imposed a fine of Kshs. 10,000/= or 3 months imprisonment. This was within the statutory limits, though clearly lenient compared to the maximum permissible sentence.
47. The prosecution argues that: The victim suffered visible injuries (e.g., a stitched head wound). The respondents showed no remorse prior to conviction. The trial court failed to address aggravating circumstances such as the manner and motive of the assault.
48. On the other hand, the respondents argue that: -The incident arose from a longstanding cultural dispute over a circumcision shrine. There had been a previous case of affray (Kabarnet Case E225 of 2022), involving both parties, which was withdrawn upon reconciliation. The parties had previously agreed to resolve the matter amicably. The trial court considered their mitigation and reconciliatory conduct in sentencing.
49. Indeed, it appears the respondents believed the dispute had been resolved following the earlier affray proceedings, which may explain their limited participation in the trial. While not excusing the offence, this context is important for understanding the trial court's exercise of discretion.
50. From the foregoing, the sentence imposed by the trial magistrate was lenient—but not illegal or unjudicial. The court considered the reconciliatory context, absence of prior complaints, and the fact that both parties had previously engaged in a public fight which had been amicably withdrawn. These are relevant mitigating factors.
51. Though the sentence might appear lenient to the prosecution, it was not so manifestly inadequate or disturbingly inappropriate as to justify appellate interference under the principles laid down in *S v Malgas* (2001) and *Republic v Nicholas Wambogo* (2022) eKLR.
52. In view of the above, I find no compelling reason to interfere with the discretion exercised by the trial magistrate.

**Final Orders: -**

53. The appeal against sentence is hereby dismissed.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 24<sup>TH</sup> DAY OF JULY, 2025.**

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**RACHEL NGETICH**

**JUDGE**

In the presence of:

- Mr. Nganga for State.
- Mr. Chebii for Respondent.
- 1<sup>st</sup> Respondent present.
- 2<sup>nd</sup> Respondent present.
- 3<sup>rd</sup> Respondent present.
- CA, Elvis

