



REPUBLIC OF KENYA



KENYA LAW
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**Owino v Republic (Criminal Appeal E050 of 2023)
[2024] KEHC 258 (KLR) (24 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 258 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL APPEAL E050 OF 2023
KW KIARIE, J
JANUARY 24, 2024**

BETWEEN

KENNEDY MORRIS OWINO APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal case NO. E050 of 2023 of the Principal Magistrate's Court at Mbita by Hon. N.N. Moseti–Principal Magistrate)

JUDGMENT

1. Kennedy Morris Owino, the appellant herein, was convicted after pleading guilty to the offence of manslaughter contrary to section 202 as read with section 205 of the [Penal Code](#).
2. The particulars of the offence are that on the 3rd day of May 2023, at Remba Island, Suba Central sub-County within Homa Bay County, they unlawfully killed Lilian Atieno Ogutu.
3. The appellant was sentenced to fifteen (15) years' imprisonment. He was aggrieved and filed this appeal against both conviction and sentence. He raised grounds of appeal as follows:
 - a. That the sentence is harsh and excessive; therefore, pray for a lenient sentence.
 - b. That the appellant was married to the deceased and had a child with the deceased and do pray that this court considers that the child will miss parental love if the appellant is held too long in custody.
 - c. That the appellant is a first offender and prays that this be considered in the sentence.
 - d. The appellant was in remand custody; humbly pray that this Hon. court considers the proviso of section 333(2) of [CPC](#).



4. The state did not file any grounds of opposition or submissions.
5. This is the first appellate court. As expected, I have analyzed and evaluated all the evidence adduced before the lower court afresh. I have drawn my conclusions, considering that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of *Okeno v Republic* [1972] EA 32.
6. An appellate court would interfere with the sentence of the trial court only where there exists, to a sufficient extent, circumstances entitling it to vary the trial court's order. These circumstances were well illustrated in the case of *Nillson v Republic* [1970] E.A. 599, as follows:

The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in *James v Rex* (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. *R v Shershewsity* (1912) C.CA 28 T.LR 364.

7. Section 205 of the [Penal Code](#) provides as follows:

Any person who commits the felony of manslaughter is liable to imprisonment for life.

8. The facts that were read by the prosecution were as follows:

In May 2023, the accused, Kennedy Owino and the victim, Lilian Otieno Owiti, cohabited peacefully as a man and wife at Rhemba Island in Homa Bay County. The accused earned Kshs. 10,000 and kept it safely in their house, but it was not there when he looked for it. He asked her whether she took the money, but she denied it. On the 2nd day of May 2023, the accused waited for his wife to leave for her chores. He searched her pockets and found the money in her bag. The following day, the deceased returned while drunk. The accused told her that he had taken his money from her bag. The deceased protested and claimed the money was hers. She picked up a kitchen knife and advanced to the accused. The two struggled over the knife. The deceased was stabbed in the process and bled profusely. First aid was administered, but the same was unsuccessful. The victim passed on. The accused presented himself to the police at Rhemba police post, where he was detained and charged with the offence.

9. These facts do not disclose the appellant as the aggressor. If anything, He was acting in self-defence after the deceased viciously attacked him with a knife. The deceased was unfortunately stabbed as they struggled over the knife. This was that did not call for the sentence that was imposed.
10. The probation officer's report that was filed could have influenced the learned trial magistrate's sentencing decision. The alleged reputation of the appellant was not relevant in this case. I am persuaded to interfere with the sentence of the learned trial magistrate. I set aside the sentence and substitute it with an order of discharge under section 35 (1) of the [Penal Code](#) on the condition that he does not commit any other offence within twelve months.

DELIVERED AND SIGNED AT HOMA BAY THIS 24TH DAY OF JANUARY, 2024.

KIARIE WAWERU KIARIE

JUDGE

