



**Oyano v Republic (Criminal Appeal E015 of 2023)
[2024] KEHC 1374 (KLR) (15 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1374 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL APPEAL E015 OF 2023
DO OGEMBO, J
FEBRUARY 15, 2024**

BETWEEN

MICHAEL OWINO OYANO APPELLANT

AND

REPUBLIC RESPONDENT

((Being an appeal against the sentence of 20 years imprisonment in Siaya CM's court, Criminal Case No. 309 of 2020, delivered on 6-4-2023 by the Hon. L. Simiyu, SPM))

JUDGMENT

1. The appellant, Michael Owino Oyano, was charged before the lower court with 2 counts of the offence of Grievous harm contrary to Section 234 of the *Penal Code*.
2. On Count I, he was charged that on 14-12-2019 at Siantha B Village, Ramula Sub-location in Gem Sub-County within Siaya County, he unlawfully did grievous harm to Priscila Diana Ochieng by cutting her several times using a panga on her neck and both hands.
3. On Count II, he was charged that on 14-12-2019 at Siantha B Village, Ramula Sub-location, East Gem location in Gem Sub-County within Siaya County unlawfully did grievous harm to Samson Ochieng Onyango by cutting him on the face using a panga.
4. After the trial, the applicant was on 16-4-2023, sentenced to serve 10 years imprisonment on each count. The sentences were ordered to run consecutively.
5. The applicant has been aggrieved by the findings of the court and has appealed to this court. In the petition of Appeal filed on 19-4-2023, the appellant has listed the following grounds of appeal: -
 1. That the sentence is manifestly harsh and excessive.



2. That the learned trial magistrate failed to comply with the provisions of Section 329 of the [Criminal Procedure Code](#).
3. That the trial court failed to consider the appellants sworn defence statement and hence rejected it without a cogent reasons.
4. That the sentences be ordered to run concurrently.
6. The appellant did not make any submissions on this matter. Similarly, the Prosecution did not make any submissions on the appeal.
7. The appellant herein basically appeals against the sentence. It is his submissions that the sentence meted out was harsh and excessive. And secondly, that the sentences on the 2 counts ought to run concurrently and not consecutively. These, therefore are the 2 issues for determination by this court.
8. As already seen above, the appellant faced 2 counts of the offence of grievous harm contrary to Section 234 of the [Penal Code](#). Section 234 of the [Penal Code](#) provides:-

“ Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”
9. The sentence for the offence for which the appellant was convicted is upto imprisonment for life. In our case, the trial court sentenced the appellant to serve 10 years imprisonment on each count. The sentence of the court was clearly proper and within the law. I so find.
10. The issue that remains for determination therefore, is whether the sentences passed on counts I and II ought to run consecutively as ordered by the court or to run concurrently as pleaded by the appellant. Section 14 of the [Criminal Procedure Code](#), provides;

“ 1) Subject to sub-section (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefore which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after expiration of the other in the order the court may direct, unless the court directs that the punishment shall run concurrently.”
11. Dealing with this issue, the Court of Appeal in [Peter Mbugua Kabui v R](#) [2016]eKLR held in part:

“ As a general principle, the practice is that if an accused person commits a series of offences at the same time in a single act or transaction, a concurrent sentence should be given. However, if separate and distinct offense are committed in different criminal transactions, even though the count, may be in one charge sheet and one trial, it is not illegal to meet out a consecutive term of imprisonment.”

The former East African Court of Appeal held the same position in Sawedi Mukasa S/O Abdulla Aligwaisa [1946] EACA 9 dealing with the same issue, also held that it is good practice to impose concurrent sentences where a person commits more than one offence at the same time and in the same transaction save in very exceptional circumstances.



12. The *Sentencing Policy Guidelines* has also codified on this issue at Regulation 7.13. same states:

“Where the offence emanates from a single transaction, the sentences should run concurrently. However, where the offences are committed in the course of multiple transactions and where there are multiple victims, the sentence should run consecutively.”

13. It is clear from the evidence of the Prosecution witnesses herein, PW1, and PW2 that the 2 charges contained in counts I and II arose from the same incident when the appellant attacked both the 2 complainants. The 2 charges therefore formed part of the same transaction and the trial court ought to have considered the same as such and made an order that the sentences in respect of counts I and II do run concurrently.

14. It is for this reason that I find merit in this limb on the appellant’s appeal. I allow the same to this extent, I allow this appeal and set aside the sentence of the trial court. I order that the appellant shall serve 10 years imprisonment on both counts I and II as ordered by the trial courts. The sentences on counts I and II shall however run concurrently. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 15TH DAY OF FEBRUARY, 2024

D.O. OGEMBO

JUDGE

15.2.2024

Court:

Judgment read out in open court in presence of appellant and Ms. Mumu for state.

D.O. OGEMBO

JUDGE

15.2.2024

