



**Keter v Republic (Criminal Appeal E028 of 2021)
[2024] KEHC 4120 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4120 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E028 OF 2021**

JR KARANJA, J

APRIL 18, 2024

BETWEEN

WELDON KIPRONO KETER APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against a judgement dated 25th July 2023 in Criminal Case No. E123 of 2021 by Hon. E. W. Karani, RM at Kericho, Chief Magistrate’s Court)

JUDGMENT

1. The Appellant, Weldon Kiprono Keter, was charged before the Resident Magistrate at Kericho with grievous harm, Contrary to Section 234 of the Penal Code, in that on the 14th September 2020 at Kapkorech Tea Estate Londiani within Kericho County did unlawfully cause grievous harm to Reuben Kiprotich Rono.
2. After pleading not guilty, the Appellant was tried and convicted. A sentence of twenty years imprisonment was imposed on him.

Being dissatisfied with the conviction and sentence, the Appellant preferred this appeal on grounds set out in the petition of appeal filed herein on 1st November 2021 in which he complained of having been convicted on evidence by the prosecution which was insufficient and uncorroborated.
3. However, by dint of the first or additional grounds of appeal filed herein on the 28th February 2024, the Appellant abandoned the appeal on conviction and confined himself to the sentence imposed by the trial court which he contended was excessive considering that he was remorseful.
4. The State/ Respondent opposed the appeal in its entirety. The hearing was by written submissions with both parties filing that respective submissions which have been given due consideration by this court.



While the Appellant appeared in person, the Learned Prosecution Counsel, Mr. Karanja, appeared for the State.

5. The duty of this court was to revisit the evidence and draw its own conclusions bearing in mind that the trial court had the benefit of seeing and hearing the witnesses.

In that regard this court considered the evidence presented by the Complainant Reuben Kiprotich Rono (PW1), a Security Supervisor at a tea estate, Paul Kiplangat Mibei (PW2), a Security Officer at the same tea estate, Wesley Chepkwony (PW3) and his colleagues, Emmanuel Kiplangat Rono (PW4) and Kirui Kiprono (PW5).

6. Also considered was the evidence of the Clinical Officer, Robert Kipyegon Langat (PW6) and the Investigating Officer, PC Flora Chemutai (PW7).

The Appellant's statement in defence was considered. It was essentially an alibi defence indicating that the Appellant was not at the scene of the offence on the day and time that it happened.

7. All the foregoing evidence of the prosecution and the defence did not in the opinion of this court raise substantial dispute that the Complainant (PW7) was on the material date assaulted and injured. The Clinical Officer (PW6) confirmed as much and indicated that the Complainant suffered grievous harm following an assault against him with a sharp object. The necessary medical report P3 form (P. Ex. 2) was produced.

8. The Complainant indicated that he was on duty on the material date at Kapkolech Tea Estate where he worked as a security officer when the Appellant and other went there to steal tea leaves and were chased away. In the process the Appellant assaulted the Complainant using a panga (machete) and injured his right leg.

9. The Complainant's evidence was corroborated by that of his workmates (PW2 to 5). The entire evidence confirmed and established that the offence was committed against the Complainant and that the Appellant was the guilty party.

The Appellant's alibi defence was thus shattered and rendered ineffective in disengaging him from the offence. The prosecution case against him was overwhelming.

10. Therefore the Appellant's conviction is hereby upheld for being credible, sound and safe. In any event, the appeal in relation to conviction was abandoned by the Appellant.

On sentence, the Appellant was handed down a sentence of twenty (20) years imprisonment on account of the seriousness of the offence and the circumstances under which it was committed.

11. The Appellant did not provide convincing reasons for reduction of the sentence which was lawful and lenient considering that the offence of grievous harm attracts a sentence of life imprisonment in terms of Section 234 of the *Penal Code*. Nonetheless, the Appellant was a first offender and for that reason this court deems it fit and just to reduce the sentence to ten (10) years imprisonment. Accordingly, the sentence imposed by the trial court of twenty (20) years imprisonment is hereby set aside and substituted for a sentence of ten (10) years imprisonment.

12. Other than the alteration in the sentence, the appeal is substantially devoid of merit on conviction and is hereby dismissed.

DELIVERED AND DATED THIS 18TH DAY OF APRIL 2024

J. R. KARANJAH,

JUDGE

