



**Kipkoech v Republic (Criminal Appeal E014 of 2023)
[2024] KEHC 5172 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 5172 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E014 OF 2023
JR KARANJA, J
APRIL 18, 2024**

BETWEEN

VINCENT KIPKOECH APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal against a judgement dated 16th March 2023 in Criminal Case No. E1006 of 2022 by Hon. L. Mwera, RM at Kericho, Chief Magistrate's Court)

JUDGMENT

1. The Appellant, Vincent Kipkoech, was convicted by the Resident Magistrate at Kericho and sentenced to a concurrent term of three (3) years imprisonment for the twin offences of assault causing actual bodily, Contrary to Section 251 of the *Penal Code*.
2. It was alleged that on the 12th April 2022, at around 19:30hours in Kapsoit Market, Belgut within Kericho County the Appellant unlawfully assaulted Daisy Chepkemoi (Count 1) and Beryl Chepng'eno (Count 2) thereby occasioning actual bodily harm on each one of them.
3. After a full trial the Appellant was found guilty on both counts and sentenced accordingly. Being dissatisfied with the conviction and the sentence, the Appellant preferred the twelve (12) grounds of appeal set out in the petition of appeal dated 18th April 2023 and filed herein on his behalf by Rono and Company Advocates.
4. Basically, the Appellant complains that the trial court erred in law and fact by convicting him on the evidence by the prosecution which was insufficient, contradicting and laden with speculation, probabilities and possibilities.

The Appellant also complains that the trial court disregarded his defence and imposed upon him a sentence which was too harsh regard being given to the circumstances of the case.



Other than ground twelve (12) the rest of the grounds of appeal related to conviction. The State/ Respondent opposed the appeal.

5. The hearing of the appeal was by written submissions which were filed by both sides and given due consideration by this court.

The Appellant was represented by the Learned Counsel, Ms. Kirui, holding brief for Ms. Cherotich, Learned Counsel.

The State was represented by the Learned Prosecution Counsel, Mr. Karanja.

6. It is trite law that the duty to reconsider or re-evaluate the evidence presented in the trial court and draw independent conclusion always lies with the first appellate court which in the process has to appreciate that it did not have the advantage of seeing and hearing the witness and make due allowance accordingly. (See, *Okeno v Republic* (11)72 EA 32, *Kimeu v Republic* (200) 1 KLR 756 and [Soki v Republic](#) (2004) 2KLR 21).

7. In that regard, the evidence of the six witnesses (PW1 to PW6) on which the prosecution case was founded was considered by this court against the Appellant's statement in defence. Clearly, what emerged as the basic issue for determination was whether the two Complainants (PW1 and PW2) were assaulted and occasioned bodily harm and if so, whether the appellant was the person responsible for the offence.

8. With regard to the assault factor, the evidence did not raise any dispute or contest.

Therefore, the evidence by both Complainants showing and establishing that the unlawful act of assault was committed against each of them was acceptable, credible and sufficient enough in proving the fact beyond reasonable doubt.

9. Indeed, the Appellant did not really dispute the occurrence of the offences as alleged by the prosecution witnesses. His point of departure was reflected in the contention that he was not responsible for the offences and the reason for his arraignment in court was the dishonesty of the prosecution witnesses and their withholding vital information in addition to the bias displayed against him during the investigation of the case.

10. However, the evidence by the Complainant (PW1 and PW2) and indeed that of the Appellant indicated that they were all not strangers to each other. The second Complainant Beryl (PW1) was a daughter of the first Complainant Daisy (PW2) who seemingly had been involved in a marital or otherwise relationship with the Appellant.

Both Complainants indicated that the Appellant on the material date at about 7:00pm arrived at their home in an aggressive manner and found them there. He then raised issues with the first Complainant (PW2) over her failure to pick his phone calls before attacking and assaulting her. He also assaulted the second Complainant (PW1).

11. Both Complainants indicated that the Appellant left the scene after the assault and after having threatened them. They then reported the matter to the Police and proceeded to hospital for treatment.

The Complainant's neighbours, Predencia Cheptoo (PW3) and Patrick Kipkoech Kirui (PW4) indicted that they rushed to the Complainant's house after being attracted by screams emanating from there. They found the Appellant in the house having assaulted both Complainants. He left the scene immediately after their arrival. They had previously known him.



12. Robert Kipyegon Langat (PW5), a Clinical Officer at Kaitui Dispensary examined both Complainants and confirmed that they suffered bodily injuries following unlawful acts of assault against them. The necessary medical report P3 forms (P. Ex. 1 and 2) were produced to confirm as much.
CPL. Raida Zabaro (PW6), of Kapsoit Police Station investigated the case and thereafter preferred the present charges against the Appellant.
13. Although the defence was a denial, the evidence by the two Complainants (PW1 and PW2) as corroborated by that of their neighbours (PW3 and PW4) clearly and credibly established and proved that the Appellant was the person responsible for committing the concurrent acts of assault against the two Complainants. His defence which indicated that he was implicated by the Complainants and their neighbours was thus disproved and rendered unworthy of belief.
14. Consequently, the Appellant's conviction by the trial court was sound and proper and is hereby upheld with the result that all the grounds of appeal in relation thereto are overruled and dismissed.
On sentence, the trial court considered the Appellant's mitigation and noted that he was a repeat offender having previously been charged with causing grievous harm upon the first Complainant (PW2). However, there was no indication as to whether the Appellant was convicted for the alleged previous offence.
15. Nonetheless, the trial court imposed upon the Appellant a sentence of three (3) years imprisonment on each of the two counts of assault but to run concurrently. This was a lawful sentence which was reasonable considering the circumstances of the case and that Section 251 of the *Penal Code* attracts a sentence of five (5) years imprisonment in the maximum.
16. However, regard being given to the existing or previous relationship of a marital nature or quasi-marital nature between the Appellant and the first Complainant Daisy (PW2) and the need to reconcile them as well as the need to decongest the prison ballooning population, the concurrent sentence of three (3) years imprisonment is hereby set-aside and substituted for a non-custodial probation sentence for the remainder of the period now that the Appellant has already served one (1) in prison.
17. Otherwise, the appeal is substantially dismissed.

DELIVERED AND DATED THIS 18TH DAY OF APRIL 2024

J. R. KARANJAH,

JUDGE

