



**Ruto v Republic (Criminal Appeal 121 of 2023)
[2024] KEHC 5089 (KLR) (15 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 5089 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
CRIMINAL APPEAL 121 OF 2023**

DR KAVEDZA, J

MAY 15, 2024

BETWEEN

COLLINS KIBET RUTO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the original conviction and sentence delivered by
Hon. Maroro (P.M) on 1st November 2022 at Kibera Chief Magistrate's
Court Criminal Case no. E579 of 2022 Republic vs Collins Kibet Ruto)*

JUDGMENT

1. The appellant was charged and, after a full trial, convicted for the offence of escape from lawful custody, contrary to section 123 as read with section 36 of the *Penal Code*, Cap 63 Laws of Kenya. He was sentenced to serve two (2) years imprisonment.
2. Being aggrieved, he filed an appeal challenging his conviction and sentence. In his memorandum of appeal dated January 26, 2023 and amended grounds of appeal, he challenged the totality of the prosecution's evidence against which he was convicted. He argued that the prosecution failed to link him to the offence. He urged the court to quash his conviction and set aside the sentence.
3. As this is a first appeal, I am required to re-evaluate the evidence tendered in the trial Court and come to an independent conclusion as to whether or not to uphold the convictions and sentences. This task must have regard to the fact that I never saw or heard the witnesses testify (see *Okeno v Republic* [1973] EA 32).
4. The prosecution presented four witnesses to support their case. PC John Kimeu (PW1) testified that on July 16, 2020, he took the appellant to court for sentencing after the appellant pleaded guilty on July 10, 2020, in another case he was facing a charge of impersonating a police officer. Kimeu, who was the investigating officer in the case, informed the court that PC Katunge (PW4) who was responsible



for the appellant, notified him that the appellant had escaped. Despite raising an alarm, PW1 could not apprehend the appellant and reported the incident to Kilimani Police Station.

5. PW4, PC Pascalia Katunge, testified that on July 16, 2020, she was the court orderly at Court 7 Kibera Law Courts where the appellant, a convict, was due for sentencing. During the sentencing, the appellant's handcuffs were removed. After the proceedings, Katunge left momentarily to obtain a committal warrant for the appellant. Upon her return, she found the appellant missing and had presumably escaped. She indicated that it was PW1's responsibility to handcuff the appellant after sentencing.
6. PW2, Inspector Joash Magero, received a report of the prisoner's escape at Kilimani Police Station. Following the escape, the appellant was arrested in connection to another case and was remanded at the Industrial Area Police Station.
7. PW3, Allen Mogere, testified that he was the prosecutor at Kibera Court No. 5 at the time of the incident. At the time, the appellant had pleaded guilty to the offence of impersonating a Police Officer. After sentencing, Mogere left the appellant with his advocate. Later, he was informed by PW4 about the appellant's escape. He recorded a statement at Kilimani Police Station.
8. After the close of the prosecution's case, the appellant was found to have a case to answer and was put on his defence where he gave unsworn evidence. He testified that on July 16, 2020, after being brought to court by PW1, he removed his handcuffs and left. He claimed he was unaware of any issues until his rearrest in April 2022, maintaining his innocence throughout.
9. I have considered the appeal, the evidence on record, and the submissions. The appellant was charged with the offence of escape from lawful custody contrary to section 123 as read with section 36 of the [Penal Code](#). Section 123 of the penal code provides:

123. Any person who being in lawful custody escapes from that custody is guilty of a misdemeanor.
10. A misdemeanor is defined in section 4 of the [Penal Code](#) as any offence which is not a felony. The general punishment for misdemeanor is provided for in section 36 of the [Penal Code](#). Section 36 of the penal code procedure provides that:

Where in this code no punishment is specifically provided for any misdemeanor, it shall be punishable with imprisonment for a term not exceeding two years or with a fine or to both
11. On the evidence, this court is satisfied that there was more than sufficient evidence showing that the appellant had in one way or another escaped from lawful custody while being held at Kibera Chief Magistrate's Court awaiting transfer to prison. The evidence by PW1, PW3, and PW4 was sufficient and corroborative in establishing the fact of escape against the appellant.
12. Although the appellant implied that he was released and, to the best of his knowledge, he was free, the prosecution evidence invalidated the claim. No release order was issued by the court or any other person in that regard. In addition, he was sentenced on that particular day to serve a prison sentence. The prosecution case against the appellant was sound and credible. It was therefore evident that the appellant escaped from lawful custody, which is an offence. The learned trial Magistrate analysed the evidence and came to the correct conclusion. As such, this court cannot interfere with his conviction by the trial court.
13. The Appellant was sentenced to two (2) years imprisonment. Section 36 of the [Penal Code](#) provides for a sentence not exceeding two years, with a fine or both. Considering the offence that had caused him to be in remand, I find the maximum sentence of two (2) years to have been excessive. I set the



sentence aside and substitute it with a sentence of twelve (12) months imprisonment. The appeal on the sentence therefore succeeds.

Orders accordingly.

JUDGEMENT DATED AND DELIVERED VIRTUALLY THIS 15TH DAY OF MAY 2024

D. KAVEDZA

JUDGE

In the presence of:

Appellant present

Ms. Tumaini for the Respondent

Joy Court Assistant.

