



REPUBLIC OF KENYA



KENYA LAW
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**Kiptanui v Republic (Criminal Appeal 199 of 2019)
[2024] KEHC 6558 (KLR) (5 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 6558 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL APPEAL 199 OF 2019
RN NYAKUNDI, J
JUNE 5, 2024**

BETWEEN

SILAS KIPTANUI APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The appellant was charged and convicted of the offence of threatening to kill contrary to section 223 of the [Penal Code](#) in Eldoret Chief Magistrates Court Case No. 3538 of 2019 vide a judgement delivered on 6th December 2019. The particulars of the offence were that on the 20th Day of November 2019 at Sugoi location, Kapkong Sub Location, Uasin Gishu County, without lawful excuse uttered the words that were threatening; “niende nivute bhang nirudi nikuue” to Caroline Silakwa Too the words which intended to cause fear to the said Caroline Silakwa Too.
2. The appellant pleaded guilty to the offence and the facts were read out to him in court. He confirmed that they were true and in mitigation he asked the court to pardon him, urging that he would not reoffend. Upon considering the mitigation and the presentencing report, the trial court sentenced the appellant to 8 years’ imprisonment.
3. Being aggrieved with the sentence, he instituted the present appeal vide a petition of appeal which is undated premised on the grounds that he pleaded guilty at the trial court and was remorseful for his actions. Further, that he committed it out of foolish anger and the sentence was harsh and excessive. He sought a non-custodial sentence in substitution for the sentence meted out.
4. The appellant filed submissions on his appeal. He urged that he pleaded guilty with an aim of seeking leniency but in the inside of his heart he knew that he had been falsely accused because of his crude sounding voice. He stated that he had an injury in his elbow which was fitted with a reconstruction plate which cannot allow him to do hard labour. Additionally, he submitted that he had never been



convicted of a criminal offence before and the facts had been construed to make him look guilty. He was induced by the investigating officer to plead guilty as he was a first offender. He maintained that he was remorseful and reformed and prayed the court allow his appeal as prayed.

Analysis & Determination

5. Given that this is a first appeal the role of this court is well settled. It was held in the case of *Pandya v R* [1957] EA 336 that this Court is duty bound to revisit the evidence tendered before the trial court afresh, evaluate it, analyze it and come to its own independent conclusion on the matter but always bearing in mind that the trial court had the advantage of observing the demeanour of the witnesses and hearing them give evidence and give allowance for that.

Whether the appeal against sentence is merited

The appellant was convicted and sentenced of his own plea of guilty but his appeal does not challenge the process of plea taking. Section 348 of the *Criminal Procedure Code* bars appeals from subordinate courts where an accused was convicted upon a plea of guilty except on the extent and legality of sentence by providing that:-

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent and legality of the sentence.

In the case of *Olel v Republic* [1989] KLR 444, it was held that:-

“Where a plea is unequivocal, an appeal against conviction does not lie. Section 348 of the *Criminal Procedure Code* (cap 75) does not merely limit the right of appeal in such cases but bars it completely.”

The appellant has not challenged the legality of the sentence. Section 223 of the *Penal Code* provides;

1. Any person who without lawful excuse utters, or directly or indirectly causes any person to receive, a threat, whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for ten years.
6. From the record of the trial court, specifically the presentencing report, it is evident that the appellant was a repeat offender with a history of violence. In his appeal his has attempted to deceive the court that he was a first offender at the time of the offence, which allegation is untrue. Further, he maintains that he was wrongfully accused in his submissions, a position which indicates that he is yet to reform despite having admitted to the offence himself. On one hand he contends that he was led to commit the act out of anger and being drunk and on the other hand he vehemently denies his guilt.
7. I have considered the trial court decision, the mitigating factors including but not limited to the presentencing report and it is my considered view that the appeal lacks merit. I hereby dismiss the appeal in its entirety.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 5TH DAY OF JUNE 2024

In the presence of

Mr. Mugun for the State

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R. NYAKUNDI

JUDGE

