



REPUBLIC OF KENYA



**KENYA LAW**  
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**Komen v Republic (Criminal Appeal E041 of 2022)  
[2024] KEHC 9707 (KLR) (25 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9707 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL APPEAL E041 OF 2022  
RB NGETICH, J  
JULY 25, 2024**

**BETWEEN**

**MUSA KOMEN ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(This appeal emanates from the decision of the Senior Resident Magistrate Hon. C R T Ateya in the Magistrate's court at Kabarnet in Criminal case No. E1523 of 2021)*

**JUDGMENT**

1. The Appellant was charged with the offence of Grievous Harm contrary to section 234 of the [Penal Code](#). The particulars of the charge were that the accused on the 7<sup>th</sup> day of November, 2021 at about 1530 Hours at Kaimugul village in Baringo North Sub- County within Baringo County unlawfully maimed Mary Cherutoi.
2. The Appellant denied the charge and by judgment delivered on the 29<sup>th</sup> September, 2022 where it found that the prosecution had proved its case to the required standard. The accused was found guilty and convicted under section 215 of the [Criminal Procedure Code](#). The trial court subsequently on the 12<sup>th</sup> October, 2022 sentenced the accused to 20 years imprisonment.
3. The Appellant having been aggrieved and dissatisfied with the trial court's decision appeals against the judgment on the following grounds: -
  - i. That my complainant is a close relative and ready to forgive me unconditionally and withdraw the matter and has no problem being set free.
  - ii. That the complainant prior knew that the case would result in a small punishment and was shocked to hear of the harsh sentence meted on me.



- iii. That I am ready to live in harmony with the complainant, given the second chance.
  - iv. That I am a first offender.
  - v. That I am remorseful of what transpired on that fateful date.
  - vi. That the sentence meted on me was too harsh in all circumstances.
4. The Appellant pray that this Appeal be allowed sentence be reduced or set aside and he be acquitted or he be placed on a non-custodial sentence.

### **Appellant's Submissions**

5. The Appellant filed written submissions on the 18<sup>th</sup> December, 2023. He submits that he is deeply remorseful and repentant for causing severe inflictions upon the complainant which ought not to have occurred. He apologizes to all and for any inconvenience that he may have caused the court and the entire criminal justice system during the trial of this case and the appeal processes.
6. He submits that he has taken time to reflect on his past and he now believes that he has learnt from his past mistakes and urges this court to consider that he is 56 years old now and he did not comprehend the consequences of his actions.
7. He states that he is a first offender and he has never been in the wrong side of the law prior to this offence. He attributes his action to influence of bad company and drug abuse following the death of his wife which made him lack wisdom in his dealings due to pressure of life.
8. He submits that what happened cannot be reversed but can be harnessed to make the future better under the circumstances. He states that he is ready for the outside world as a law-abiding citizen and definitely a better resourceful person than he was and a release from prison on a non-custodial sentence will be favorable to him.
9. He maintains that he is remorseful and his prayer is that the following be considered before declaring the sentence.
  - i. The time already served in custody from the date of arrest on 17<sup>th</sup> May, 2010 as envisaged in section 333(2) of the *Criminal Procedure Code* as sufficient punishment.
  - ii. That in the alternative, a sentence that the Honourable court deems fair, just and reasonable in the circumstances in promoting his rehabilitation and transformation while in custody.

### **Response By State**

10. When the matter came up for hearing on the 16<sup>th</sup> January, 2024, the prosecution counsel Ms. Ratemo submitted that she has gone through the written submissions by the Appellant and she has also been served with a letter by the complainant who said that she has forgiven the appellant. She stated that the appeal is on sentence and they do not object resentencing by the court but prayed for a social inquiry report to be done.

### **Social Inquiry Report**

11. The Appellant's siblings are of the view that the victim who went to the appellant's house was on the wrong. They however went to the victim to seek forgiveness on behalf of the appellant but they did not agree as the victim felt coerced.



12. From the report, the appellant dropped out of school in class 6 due to lack of school fees and engaged in farming and casual labor until the time of his arrest. The appellant indicated that he is not married and he does not have any children and that he used to take alcohol and cigarettes prior to his arrest. He stated that he is sickly and is not engaged in any prison program.
13. The victim stated that she went to appellants for medication and while there, they had altercation which turned physical and in the process the inmate ended up stabbing the victim with knife. The victim was rescued and rushed hospital for treatment.
14. The area chief indicated that the family of the Appellant and the family of the victim met but they did not agree. The local administration are not opposed to the Appellant being granted to a lesser sentence but added that since the family of the inmate and the family of the victim failed to reconcile then the court can exercise its discretion.
15. The Appellant pleads for leniency from the court stating that at the time of the offence, he was under the influence of alcohol. He adds that he has learnt his lesson and feels that the sentence meted on him is too harsh and prays for a lesser sentence and if possible, he prays for a non-custodial sentence and if released, he will engage in farming and carpentry at home since he has a permanent place of abode.
16. The victim was available through a phone call. She confirmed that the family of the Appellant had approached her to seek forgiveness and reconciliation. However, they could not reach an agreement but what angered her is the fact that the family of the inmate prepared minutes to indicate that they had reconciled yet it is not true. She added that she feels like she is being coerced to forgive the Appellant and for this reason she feels like the Appellant and his family are not being genuine. She strongly opposes the inmate getting a reduced sentence adding that she narrowly survived death from the ordeal.
17. The local administration on their part indicated that they are aware the inmate's family approached the victim but they failed to reach an agreement on the way forward with regard to reconciliation and that at some point the Appellants' family wanted the victim to forgive the inmate since she is the one who went to the inmate's house. The family of the Appellant pray that the Appellant be granted a lesser sentence.

### **Determination**

18. I have considered the application. I find that the application invokes the revisional jurisdiction of this court which gives the court powers, in appropriate cases, to review and vary any orders, decision or sentence passed by the trial court if the court was satisfied that the impugned order, decision or sentence was illegal or was a product of an error or impropriety on the part of the trial court. If the court was so satisfied, the law mandated it to make appropriate orders to correct the impugned order, decision or sentence and align it with the law. The above is the import of Section 362 as read with Section 364 of the *Criminal Procedure Code*.
19. The applicant says he is remorseful, that he has reformed having been in prison for long and seeks a non-custodial sentence for the remainder of his prison term. so that he may unite with his family.
20. From the social inquiry report, the victim acknowledges that the relatives of the Appellant had approached her seeking forgiveness but they failed to agree and appellants family wrote minutes indicating the that they had agreed and she felt coerced to forgive the inmate. She is opposed to review of appellant's sentence. The local administration confirmed that the two families failed to reach an agreement but the inmate's family wanted the victim to forgive the inmate on ground that she is the one who went to the accused's house.



- 21. The probation officer’s opinion is the request for forgiveness by the appellant and his family is not genuine and left the issue of review of sentence to the discretion of this court.
- 22. The objectives of sentencing are outlined in the 2023 [Judiciary of Kenya Sentencing Policy Guidelines](#) at page 15, paragraph 4.1 as follows:

- Retribution: To punish the offender for his/her criminal conduct in a just manner.
- Deterrence: To deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences.
- Rehabilitation: To enable the offender reform from his criminal disposition and become a law-abiding person.
- Restorative justice: To address the needs arising from the criminal conduct such as loss and damages. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.
- Community protection: To protect the community by incapacitating the offender.
- Denunciation: To communicate the community’s condemnation of the criminal conduct.”

23. I have considered the mitigation by the accused and the fact that the accused has been in prison since November, 2021 up to now. I however take note of the fact that the social inquiry report is not favorable to the appellant. I have taken into consideration the nature of the offence, the circumstances of this case and sentiments by the victim and local administration. I also take note of the fact that the appellant is a first offender and decline to allow non-custodial sentence but I am inclined to reduce the imprisonment period to 10 years imprisonment.

24. **Final Orders:** -

- 1. Appellant’s Sentence is hereby revised to 10 years imprisonment.
- 2. Period served in remand from date of arrest to be computed in the sentence.

**JUDGMENT DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 25<sup>TH</sup> DAY OF JULY 2024.**

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**RACHEL NGETICH**  
**JUDGE**

In the presence of:  
Elvis & Komen – Court Assistants.  
Ms. Ratemo for State.  
Appellant present.

