



REPUBLIC OF KENYA



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**Stanley v Republic (Criminal Appeal E019 of 2022)
[2024] KEHC 9764 (KLR) (16 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 9764 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
CRIMINAL APPEAL E019 OF 2022**

**RL KORIR, J
JULY 16, 2024**

BETWEEN

ROTICH KIPYEGON STANLEY APPELLANT

AND

REPUBLIC RESPONDENT

*(From the Conviction and Sentence in Criminal Case Number E 086
of 2020 by Hon. Omwange J. in the Magistrate's Court in Sotik)*

JUDGMENT

1. The Appellant was charged with the offence of attempted murder contrary to section 220(a) of the Penal Code. The particulars of the charge were that on 22nd October 2020 at Kobel Centre, Taboino Sub-Location, Konoin Sub-County within Bomet County, the Appellant attempted wilfully and unlawfully to cause the death of Willy Bett Mutai by stabbing him with a kitchen knife twice on his right chest and once in his back.
2. The Appellant pleaded not guilty to the charge before the trial court and a full hearing was conducted. The prosecution called nine (9) witnesses in support of its case.
3. In a Judgment dated 28th April 2022, the trial court convicted the Appellant of the charge of attempted murder and sentenced him to serve 15 years imprisonment.
4. Being aggrieved with the Judgment of the trial court, the Appellant, Stanley Kipyegon Rotich appealed against his conviction and sentence. In his home made Petition of Appeal received in court on 9th May 2022, he relied on the following grounds reproduced verbatim:-
 - i. That the learned trial Magistrate erred in both law and fact by relying on uncorroborated evidence to convict the Appellant.



- ii. That the learned trial Magistrate erred in both law and fact by relying on evidence adduced by the Prosecution side which was inconsistent and full of irregularities.
 - iii. That the learned trial Magistrate erred in both law and fact by rejecting my plausible defence without any further explanation of it.
 - iv. That I pray to be present during the hearing of this Appeal.
5. The Appellant later filed amended grounds of Appeal on 2nd May 2023 against the sentence only. He relied on the following grounds reproduced verbatim:-
- i. That the sentence imposed did not regard Article 50(2)(p) of *the Constitution* of Kenya and provision of the policy sentencing guidelines directives 2015 under paragraph 4.1
 - ii. That the Appellant is more remorseful and regrets his action, he is repentant of his misdeed.
 - iii. That the Appellant was drunk at the time of this crime, married with children going to school.
 - iv. That the honourable court may be pleased to consider my mitigation ground or may be pleased to deem fit and grant a lesser sentence which is proper and corrective.
6. This being the first appellate court, I have a duty to re-evaluate the evidence on record afresh, analyse it and come to my own independent conclusion. I also bear in mind that the trial court had the advantage of observing the demeanour of the witnesses during the trial.
7. I proceed to set out the case that was before the trial court in the succeeding paragraphs.

The Prosecution's/Respondent's Case.

8. It was the Prosecution's case that the Appellant attempted to murder Willy Bett Mutai (PW1). PW1 testified that on the material day, he was stabbed by the Appellant in his back and chest. That the Appellant also bit him on his face.
9. Kennedy Laboso (PW5) who was a clinical officer stated that he examined PW1 on 5th November 2020 and found that he had fresh wound stitches above his right eye and had linear wounds on his thorax, armpit and his chest. PW5 stated that the wounds were inflicted by a knife and he categorised the degree of injuries as grievous harm.
10. Johnstone Koech (PW6) who was the area chief testified that when they arrested the Appellant, they recovered a knife with blood stains from the Appellant's house. Richard Kimutai Langat (PW4) who was the Government Analyst examined and analysed the Appellant's blood and the victim's blood against the blood stains in the knife and found that the blood stains in the knife belonged to the victim (PW1).
11. At the close of the prosecution case, the trial court ruled that a prima facie case had been established against the Appellant and he was put on his defence.

The Accused/Appellant's Case

12. The Appellant, Stanley Kipyegon Rotich (DW1) denied committing the offence. He stated that he was a boda boda rider and on the material day at around 2 p.m., he took two passengers to Silibwet where they drank alcohol. That he got drunk and slept there until 5 p.m. the following day. It was his testimony that after dropping his two passengers, he was attacked by about 10 people. That one of the people who attacked him identified himself as a chief and had a knife. He stated that he was arrested and taken to Mogosiek Police Station. That he had no grudge with any person.



13. The Appeal was canvassed by way of written submissions following the court's directions.

The Appellant's Submissions.

14. In his submissions undated submissions filed on 2nd May 2023, the Appellant submitted that he did not want to challenge the merits or demerits of the conviction as the evidence adduced was overwhelming. That he regretted committing the offence and was sorry for the pain he caused the complainant. He further submitted that he was remorseful.
15. It was the Appellant's submission that the trial court meted out a harsh sentence and it did not consider his mitigation or that he was a first offender. That he wanted this court to reduce the 15 year sentence and he cited the case of Regan Otieno Okello vs Republic (2022) eKLR where a 20 year sentence was substituted with a 10 year sentence.
16. The Appellant submitted that he had undergone punishment for the 3 years he had been in custody. That he was drunk during the commission of the offence.

The Respondent/Prosecution's submissions.

17. In their undated submissions filed on 7th November 2023, the Prosecution submitted that they opposed the Appeal. That the Appellant was properly identified and placed in the scene by PW1, PW2, PW3 and PW8. They further submitted that PW1, PW2, PW3 and PW8 all testified that they knew the Appellant before the commission of the offence and when the Appellant was arrested and interrogated, he admitted to committing the offence and thereafter surrendered the knife which he used to stab the victim. That there was no doubt regarding the identity of the Appellant as the perpetrator.
18. It was the Respondent's submission that the Appellant committed the offence of attempted murder by stabbing PW1 with a knife. That the Appellant had previously been armed with a mallet and that a mallet and a knife were considered dangerous weapons. It was their further submission that the clinical officer (PW5) confirmed that the injuries suffered by PW1 were inflicted by a knife and this was consistent with the testimonies of PW1, PW2, PW3, PW6 and PW8. That the injuries classified as grievous harm were serious in nature and the victim could have died if he had not been rescued.
19. The Respondent submitted the blood samples recovered from the knife used by the Appellant matched the blood of the victim and that meant that the Appellant attacked the victim.
20. It was the Respondent's submission that the Appellant denied committing the offence and did not avail any witness to corroborate his defence. That the Appellant confirmed that he had no grudge with the victim or any of the Prosecution witnesses. It was their further submission that the Appellant's defence was weak and unconvincing.
21. The Respondent submitted that being drunk was not an excuse to commit such a crime and the Appellant had not explained how being drunk led him to commit the offence. The Respondent further submitted that the maximum sentence for the offence of attempted murder was life imprisonment and that the 15 year sentence was fair. That the Appeal lacked merit and ought to be dismissed.
22. I have noted that the Appellant submitted that he did not wish to challenge the conviction but asked this court to consider reducing his sentence. His whole submission focused on sentencing. In the interest of justice, I will briefly analyse the evidence to ensure his conviction was safe then proceed with the substance of the Appeal which was an appeal on the sentence.
23. I have gone through and given due consideration to the trial court's proceedings, the Petition of Appeal filed on 9th May 2022, the Appellant's written submissions filed on 2nd May 2023 and the



Respondent's written submissions filed on 7th November 2023. The following issues arise for my determination:-

- i. Whether the Prosecution proved its case beyond reasonable doubt and whether the Appellant's defence placed doubt on their case.
 - ii. Whether the sentence preferred against the Appellant was harsh and severe.
 - i. Whether the Prosecution proved its case beyond reasonable doubt and whether the Appellant's defence placed doubt on their case
24. The offence of attempted murder is provided for in section 220 of the Penal Code which provides:-
Any person who—
- (a) attempts unlawfully to cause the death of another; or
 - (b) with intent unlawfully to cause the death of another does any act, or omits to do any act which it is his duty to do, such act or omission being of such a nature as to be likely to endanger human life, is guilty of a felony and is liable to imprisonment for life.
25. The word "attempt" is described by section 388 of the Penal Code as follows:-
- (1) When a person, intending to commit an offence, begins to put his intention into execution by means adapted to its fulfillment, and manifests his intention by some overt act, but does not fulfill his intention to such an extent as to commit the offence, he is deemed to attempt to commit the offence.
 - (2) It is immaterial, except so far as regards punishment, whether the offender does all that is necessary on his part for completing the commission of the offence, or whether the complete fulfillment of his intention is prevented by circumstances independent of his will, or whether he desists of his own motion from the further prosecution of his intention.
 - (3) It is immaterial that by reason of circumstances not known to the offender it is impossible in fact to commit the offence.
26. The Prosecution had to prove that the Appellant had the intention to cause the death of PW1. From PW1's testimony, the Appellant stabbed him in the back and in his chest and when he collapsed to the ground, the Appellant bit him on his face. The Appellant was placed in the scene by Shadrack Cheruiyot Bosuben (PW2), Ali Kiprono Rotich (PW3) and Geoffrey Kipyegon Mutai (PW8) who were all eye witnesses and testified to the fact that the Appellant stabbed the victim (PW1). The eye witnesses' testimonies remained uncontroverted after cross examination.
27. Kennedy Laboso (PW5) who was a clinical officer stated that he examined PW1 on 5th November 2020 and found that he had fresh wound stitches above his right eye and had linear wounds on his thorax, armpit and his chest. PW5 stated that the wounds were inflicted by a knife and he categorised the degree of injuries as grievous harm. He produced a treatment notes and P3 form marked as P.Exh3 and P.Exh 4 respectively which I have looked at and considered. They all support the testimony of PW5 in regards to the injuries suffered by the victim.
28. Johnstone Koech (PW6) who was the area chief testified that when they arrested the Appellant, they recovered a knife with blood stains from the Appellant's house. The knife was taken for forensic analysis by the investigating officer, No. 97287 PC Irshaad Gaal Mohammed (PW9). Richard Kimutai Langat (PW4) who was the Government Analyst examined and analysed the DNA profiles of the blood in the blood stained knife against the blood samples of the Appellant and the victim. He stated that he



found that the blood stains in the knife belonged to the victim (PW1). He produced the Government Analyst Report dated 12th November 2020 as P.Exh 7a. I have gone through and considered the Report and I have noted that the contents of the Report mirror the testimony of the Government Analyst (PW4).

29. The knife was produced as P.Exh 1 by the investigating officer (PW9) as evidence in the trial court.
30. From the evidence above, there is no doubt in my mind that the Appellant had the intent to cause the death of the victim. He stabbed PW1 twice and proceeded to bite him on his face. There was also no doubt about his identity as the perpetrator of the offence. As stated earlier, he was placed in the scene of the crime by three eye witnesses, PW2, PW3 and PW8. He was also found in possession of the weapon by the area chief (PW6) who also testified that the Appellant admitted to him that he committed the offence. After the knife was submitted for forensic analysis, it was found that the blood on the knife belonged to the complainant, which meant that it was the knife (P.Exh 1) that was used to stab the victim (PW1). The clinical officer (PW5) confirmed that injuries sustained by the victim were caused by a knife. It is my view that the evidence adduced was overwhelming and damning.
31. I have considered the Appellant's defence where he stated that he drunk on the material day and slept it off until the following day at 5 p.m. when he was arrested. When he was cross examined, he changed his story and stated that on the material day, he had attended a circumcision ceremony and spent the night where the ceremony was held. Further, he denied committing the offence while drunk.
32. The Appellant's defence as a whole was contradictory, untruthful and weak and did not create any doubt on the Prosecution's case. I uphold the trial court's conviction.
 - ii. Whether the sentence preferred against the Appellant was severe.
33. The penal section for this offence as stated earlier in this Judgment was life imprisonment. The trial court sentenced the Appellant to serve 15 years imprisonment.
34. In this Appeal, the Appellant is aggrieved with the length of the sentence. It is therefore important to set out the circumstances under which an appellate court may interfere with sentence. In *Tudo vs Republic* (Criminal Appeal E009 of 2023) [2024] KEHC 1783 (KLR) (28 February 2024) (Judgment), the court held:-

“This being an appeal against sentence, the Court in *Wanjema v. Republic* (1971) EA 493 laid down the general principles upon which the first appellate Court may act on when dealing with an appeal on sentence. An appellate Court can only interfere with the sentence imposed by the trial Court if it is satisfied that in arriving at the sentence the trial Court did not consider a relevant fact or that it considered an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the appellate Court must not lose sight of the fact that in sentencing, the trial Court exercised discretion and if the discretion is exercised judicially and not capriciously, the appellate Court should be slow to interfere with that discretion.”

35. The Appellant quoted an earlier decision of this court i.e. *Kirui v Republic* (Criminal Appeal E046 of 2021) [2022] KEHC 15632 (KLR) (22 November 2022) (Judgment) to back his plea for reduced sentence. In that case the Appellant who was 18 years old had been convicted for the offence of grievous harm in the trial court and was sentenced to serve 7 years imprisonment. I considered the circumstances of his case on Appeal and I reduced the sentence from 7 years to 4 years.



36. It is salient to note that the court has discretion in sentencing. It does not however reduce sentences as a matter of course as suggested by the Appellant when he referred this court to its previous decision. The court is guided by facts and the circumstances of the case when considering an appropriate sentence.

37. Further, this court is guided by the objectives of sentencing as set out in law and various legal texts. The Judiciary Sentencing Policy Guidelines 2023 outlines the objectives of sentencing at paragraph 1.3.1 as follows:-

Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other- in so far as possible, sentences imposed should be geared towards meeting the objectives in totality.

- i. Retribution.
- ii. Deterrence.
- iii. Rehabilitation.
- iv. Restorative justice.
- v. Community Protection.
- vi. Denunciation.
- vii. Reconciliation.
- viii. Reintegration.

38. The Judiciary Sentencing Policy Guidelines 2023 also outlines the principles underpinning the sentencing process at paragraph 1.2 as follows:-

- i. Proportionality: The sentence meted out must be proportionate to the offending behaviour meaning it must not be more or less than is merited in view of the gravity of the offence. Proportionality of the sentence to the offending behaviour is weighted in view of the actual, foreseeable and intended impact of the offence as well as the responsibility of the offender.
- ii. Equality/Uniformity/Parity/Consistency/Impartiality: The same sentences should be imposed for the same offences committed by offenders in similar circumstances.
- iii. Accountability and Transparency: The reasoning behind the determination of sentence should be clearly set out and in accordance with the law and the sentencing principles laid out in these guidelines.
- iv. Inclusiveness: Both the offender and the victim should participate in and inform the sentencing process.
- v. Totality of the Sentence: The sentence passed for offenders convicted for multiple counts must be just and proportionate, taking into account the offending behaviour as a whole.
- vi. Respect for Human Rights and Fundamental Freedoms: The sentences imposed must promote, and not undermine, human rights and fundamental freedoms. Whilst upholding the dignity of both the offender (and where relevant, the victim), the sentencing regime should contribute to the broader enjoyment of human rights and fundamental freedoms in Kenya. Sentencing impacts on crime control and has direct correlation to fostering an environment in which human rights and fundamental freedoms are enjoyed.



- vii. Enhancing Compliance with Domestic Laws and Recognised International and Regional Standards on Sentencing: Domestic law sets out the sentences that can be imposed for each offence. In addition, those international legal instruments, which have the force of law under Article 2 (6) of *the Constitution* of Kenya should be applied. There are also international and regional standards and principles on sentencing that, even though not binding, provide important guidance on sentencing.
39. I have looked at the trial court record and I have noted that the trial court acted properly when it recorded and considered the Appellant’s mitigation. The trial court also noted that the Appellant had been in custody since 2nd November 2020.
40. Having considered the circumstances of the case, I am convinced that the trial court did not err when it handed the Appellant a 15 year sentence. It was a fair and proportionate sentence and there is no reason for this court to interfere with it.
41. Consequently, I uphold the conviction and the sentence passed by the trial court. By dint of section 333(2) of the Criminal Procedure Code, the sentence shall run from 2nd November 2020 being the date of his pre-trial custody.
42. In the end, the Appeal is dismissed.

Orders accordingly.

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 16TH DAY OF JULY, 2024.

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R. LAGAT-KORIR

JUDGE

Judgement delivered in the presence of the Appellant acting in person, Mr Njeru for the Respondent and Siele (Court Assistant).

