



**Aseka v Republic (Criminal Appeal E009 of 2022)
[2023] KEHC 644 (KLR) (8 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 644 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL APPEAL E009 OF 2022
JWW MONG'ARE, J
FEBRUARY 8, 2023**

BETWEEN

JACOB ASEKA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an Appeal from the sentence of Hon. E. Kigen delivered in Eldoret
Chief Magistrate's Court Case No. 4572 of 2017 on 14th February, 2022)*

JUDGMENT

1. The appellant was charged with the offence of causing grievous harm contrary to section 234 of the [Penal Code](#). The particulars of the offence are that on the 27th day of November 2017 at Chekalini village in Lugari Sub County within Kakamega County, he willfully and unlawfully caused grievous harm to Esau Aseka Kharenyi.
2. The appellant pleaded not guilty and the matter proceeded to full trial. The prosecution placed four witnesses on the stand and the appellant was placed on his defence. Upon considering the evidence adduced in court, the trial court found the appellant guilty of the main count and sentenced him to 5 years' imprisonment on February 14, 2022.
3. Being aggrieved by the sentence, the appellant preferred this appeal vide a petition of appeal dated February 25, 2022 on the following grounds;
 - 1) That (I) am a first offender and thus beg for leniency.
 - 2) That (I) am remorseful and reformed as (I) have learnt to take responsibility of (my) own actions.



- 3) That (I) am a young man and (I) pray to be re-constituted in the society to serve as a role model and a teacher/mentor to others of similar behaviour.
- 4) That (I) served a substantial part of (my) sentence.
- 5) That (I) am praying for reduction of sentence by the time spent in remand custody pursuant to section 333(2) and section 362, 364(1)(b) and 365 of the [Criminal Procedure Code](#) among other enabling laws.
6. That this honourable court be pleased to consider the sentencing policy of 2016 published by the Kenya Judiciary and establish the mitigating circumstances that would lessen the custodial sentence.
7. That more grounds to be adduced at the hearing thereof and determination of this appeal.

The parties filed submissions on the appeal.

Appellant's Case

4. The appellant submitted that he is a first offender and since his incarceration, he has since found God. He stated that he is remorseful for his actions and seeks forgiveness. Further, that he spent considerable time in remand urged the court to consider the same under section 333(2) of the [Criminal Procedure Code](#). He cited Petition No 15 of 2020 at Machakos and asked the court to consider the mitigation and his remorsefulness in allowing his appeal.

Respondent's Case

5. Learned counsel for the state submitted that the appellant was convicted and sentenced to 5 years imprisonment which was within the law. The sentence was very lenient considering the fact that the appellant was armed with a sharp weapon (*panga*) which he cut the complainant on several parts of the body seriously injuring him. It also came out during the hearing that, it was the 3rd time the appellant was cutting the complainant.
6. Counsel urged the court to consider the weapon used, the injuries sustained and find that the sentence of 5 years imprisonment was very lenient, within the law, and not to disturb it.

Analysis and Determination

7. The appeal is only against the sentence and therefore I shall not delve into the merits of the conviction. Section 234 of the [Penal Code](#) states as follows with regard to the offence committed by the appellant;

"Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life."

8. I am alive to the emerging jurisprudence on mandatory sentences in sexual offences, specifically the findings in [Maingi & 5 others v Director of Public Prosecutions & another](#) Petition E017 of 2021 [2022] KEHC 13118 (KLR) (17 May 2022) where GV Odunga J (as he then was) stated as follows;

"To the extent that the Sexual Offences Act prescribe minimum mandatory sentences, with no discretion to the trial court to determine the appropriate sentence to impose, such sentences fall foul of article 28 of the Constitution. However, the court are at liberty to impose sentences prescribed thereunder so long as the same are not deemed to be the mandatory minimum prescribed sentences." (Emphasis mine)



9. In the circumstances therefore, I find that the sentence meted out by the trial court was within the provisions of the law, although quite lenient. This is because the offence for which the appellant was found guilty of carried a sentence of life imprisonment. The court however was within its discretion to award a lighter sentence and upon considering the circumstances of the offence, the severity of the injuries caused and the mitigation of the appellant, I find no reason to disturb the sentence of the trial court.

10. The appeal is hereby dismissed.

DATED, DELIVERED AND SIGNED AT ELDORET AT THIS 8TH DAY OF FEBRUARY 2023

.....

J.W.W. MONGARE

JUDGE

Judgement delivered virtually in the presence of

1. Appellant Present

2. Ms Okok- For the State

3. Loyanae- Court Assistant

.....

J.W.W. MONGARE

JUDGE

