



**Bii v Republic (Criminal Appeal E018 of 2020)
[2023] KEHC 876 (KLR) (10 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 876 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL APPEAL E018 OF 2020
AN ONGERI, J
FEBRUARY 10, 2023**

BETWEEN

DENNIS BII APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the conviction and sentence of Hon. Kimanga
(SRM) delivered in Kericho Cr. Case No.e349 of 2020 on 3/12/2020.)*

JUDGMENT

1. The Appellant pleaded guilty to the charge of grievous harm contrary to section 234 of the [Penal Code](#) and he was sentenced to 15 years imprisonment on 3/12/2020.
2. The facts of the case were that on November 29, 2020 at 2:30 hours, the complainant Eunice Bii went to Nyagacho police station to report that the Appellant who is her husband had assaulted her.
3. The complainant told the police that the Appellant had gone home at 2300 hours and he demanded for food. She gave him food and he said it was cold and not enough.
4. She said that he suddenly picked a stick and assaulted her on the right hand. She sustained a fracture. The doctor assessed the degree of injury as grievous harm.
5. The Appellant was convicted on his own plea of guilt and sentenced to 15 years imprisonment.
6. The Appellant has appealed to this court against the sentence on the following grounds; -
 - I. That the learned trial magistrate erred in law and fact by sentencing him on a plea of guilt which was unequivocal.



- II. That the learned trial magistrate erred in law and fact by failing to observe that the appellant was not warned, the police coerced, threatened or intimidated the Appellant to plead guilty to the charges.
- III. That the learned trial magistrate erred in law and fact by meting out harsh sentence to appellant and yet evidence was not adduced to measure whether injuries sustained amounted to grievous harm.
7. Both parties filed written submissions as follows;
- The Appellant submitted that the sentence passed upon him was nugatory as he was neither accorded ample time to understand, comprehend and respond to the charges nor given the opportunity to explain the fact or add any relevant facts in violation of section 207 of *Criminal Procedure Code*.
8. The Appellant further submitted that the sentencing ruling was rushed without according him time to inform the court of the threats and intimidations which were subjected to him by the police.
9. The Appellant submitted that the sentence meted upon him was harsh despite being a first offender with a young family that depended on him and without considering that the complainant was to withdraw the charges against him.
10. The Appellant further submitted that he had corrected his past negative actions during the time he had been incarcerated and should be given a second chance.
11. The Respondent submitted that the plea of guilty was unequivocal in accordance with section 207 and could not be challenged as the charge and every element was stated to the appellant by the court in a language that he understood and the Appellant admitted that the same was true.
12. The Respondent further submitted that no appeal should be on a plea of guilty as per section 348 of *Criminal Procedure Code* and therefore the ground on conviction must fail as the plea of guilty was voluntary and the Appellant was duly informed of the nature of the charges and the consequences of the plea, therefore there was no miscarriage of justice or appearance of unfairness in the manner the plea was taken.
13. The Respondent submitted that the Appellant challenged the severity of the sentence and not its legality as he did not demonstrate that the sentence of 15 years was based on wrong principles of law. It was submitted that court can only hear an appeal on the legality of the sentence and not its severity. The Respondent cited the case of *James Ng'ang'a Njau v Republic* [2016] eKLR Nairobi Criminal Appeal 28 of 2015
14. The Respondent further submitted that a sentence of 15 years was quite lenient in the circumstances of the case being that grievous harm was a serious offence.
15. The Respondent reiterated that the Appellant's appeal had no merits and ought to be dismissed and conviction upheld.
16. The Appellant pleaded guilty and he has no right of appeal except against the sentence.
17. Section 348 of the *Criminal Procedure Code* provides as follows: - 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 or legality of the sentence.
18. The Court of Appeal in *Odhiambo Olel Versus Republic* (1989) eKLR, stated as follows regarding section 348 of the *Criminal Procedure Code*: - "... where a person has pleaded guilty in a clear and



unequivocal manner, he cannot on appeal challenge a conviction based on such a plea. In fact, the section does not allow appeals to be made in such cases.”

19. In *Charles Karanja Mwangi v Republic* (2017) eKLR, the court stated as follows: - “Section 348 of *CPC* bars any appeal from the subordinate court where an accused was convicted on a plea of guilty except as to the extent and legality of the sentence. The section reads as follows: “348 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 or legality of the sentence.”

The appellant by virtue of the above section is barred from challenging the conviction except that he can challenge the extent and legality of the sentence meted on him by the trial court.”

20. The offence the Appellant committed is serious and calls for a deterrent sentence.
21. Section 234 of the *Penal Code* states that any person found guilty of causing grievous harm is liable to imprisonment for life. It provides as follows: - “any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”
22. I find that the Appellant pleaded guilty and saved the court’s time and this ought to have been considered by the court.
23. I find that the sentence meted on the Appellant is excessive and I reduce it to 5 years imprisonment.

DELIVERED, DATED AND SIGNED AT KERICHO THIS 10TH DAY OF FEBRUARY, 2023.

A. N. ONGERI

JUDGE

