



REPUBLIC OF KENYA



**KENYA LAW**  
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**Ochieng v Republic (Criminal Appeal E001 of 2021)  
[2023] KEHC 3586 (KLR) (20 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3586 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CRIMINAL APPEAL E001 OF 2021  
RPV WENDOH, J  
APRIL 20, 2023**

**BETWEEN**

**JARED OMONDI OCHIENG ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From original conviction and sentence by Hon. R. K. Langat – Senior Resident Magistrate  
in Rongo Chief Magistrate’s Criminal Case no. E 177OF 2020 delivered on 31/3/2021)*

**JUDGMENT**

1. This is an appeal by Jared Omondi Ochieng against the sentence meted on him by the Hon Senior Resident Magistrate Rongo on December 29, 2020, after the appellant pleaded guilty to the offence of unauthorized disconnection of electrical apparatus contrary to section 168 (1) (d) of the *Energy Act* No 1 of 2019.
2. The particulars of the charge are that on December 27, 2020, at Marindi village in Kanyangwala Sub Location in Awendo Sub County, Migori County, without lawful right, disconnected live voltage fuse from the transformer through which the energy is supplied without the consent of the Kenya power and Lighting Company, the licensee.
3. The appellant was arraigned before the Court for plea on December 29, 2020. He pleaded guilty, was convicted and sentenced to serve five years imprisonment.
4. The appellant is dissatisfied with the sentence which he terms as harsh and excessive. He submitted that he pleaded guilty and did not waste the court’s time; that he was treated as a first offender and was remorseful; that under section 168 of the *Energy Act*, (a) upon conviction one is liable to a fine of not less than one Million shillings or imprisonment for not less than a year or to both; that so far he has served two years and three months and yet to be released on 29/4/2024. He prays that this court do raise his sentence to the sentence so far served or to a non-custodial sentence.



5. The prosecution counsel opposed the appeal on grounds that the trial court during sentence, noted that the offence is rampant in the court's jurisdiction.
6. Counsel relied on the decision of *Benard Kimani Gacheru v Republic* (2002) eKLR where the court stressed the fact that sentence rests on the discretion of the court which takes into account the facts of each case; that the factors that the appellate court will consider is whether the sentence is manifestly excessive in the circumstances of the case, or the court overlooked some material facts or that the trial court acted on a wrong principles of law; that the court considered the effect of the offence on the society and that the appellant has not demonstrated that the court failed to consider the above stated factors. Counsel urged that the sentence is lawful and should not be disturbed.

I have considered the grounds of appeal, and the rival submissions.

In the *Kimani Gacheru* case (*supra*) the court's stated as follows:-

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”

7. The appellant complaints that the sentence was harsh and excessive; the trial court gave reasons why it preferred the sentence, that is, that the offence was rampant in the area and therefore called for a deterrent sentence. The appellant has not demonstrated that the court erred in principle in meting out the said sentence. Interference with electrical apparatus has very serious consequences to all those affected, the economy and businesses some to a halt. There has been no rebuttal to the fact that the offence is rampant in the said area. However, having been said to be a first offender and the fact that the appellant did not waste the court's time, I would find that five years was on the higher side. In exercise of this court's discretion, I hereby revise the sentence and set aside the sentence of five years. I substitute the sentence with four (4) years imprisonment and the prison sentence will commence on the date the appellant was sentenced on December 29, 2020. The appeal succeeds to that extent.

**DELIVERED, DATED AND SIGNED AT MIGORI THIS 20<sup>TH</sup> DAY OF APRIL, 2023.**

**R. WENDOH**

**JUDGE**

**In presence of :-**

Ms. Kosgei for State

Appellant present in person

**Ms. Nyauke –Court Assistant**

