



**Kilonzo v Republic (Criminal Appeal E132 of 2022)
[2023] KEHC 17371 (KLR) (Crim) (11 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17371 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

CRIMINAL

CRIMINAL APPEAL E132 OF 2022

K KIMONDO, J

MAY 11, 2023

BETWEEN

ALEXANDER MWONGELA KILONZO APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from the original conviction in Criminal Case No 2731 of 2021 in the Chief Magistrates Court at Makadara by M A Opondo, PM, dated 29th September 2021)

JUDGMENT

1. The appellant pleaded guilty to two counts: Malicious damage to property contrary to section 339 (1) of the [Penal Code](#); and, creating a disturbance likely to cause a breach of the peace contrary to section 95 (1)(b) of the [Code](#). He was imprisoned for three years and four months respectively. The terms were to run consecutively.
2. The petition of appeal raised three grounds which can be compressed into two: That the conviction was unsafe; and, that the sentence meted out was draconian. However, at the hearing of the appeal on April 25, 2023, the appellant confirmed that he was abandoning his appeal on conviction and was only aggrieved by the sentence.
3. The appellant is a first offender and pleaded for leniency. He claimed that his health has deteriorated in prison. He implored the court to grant him a non-custodial sentence. In a synopsis, the entire appeal is a plea for leniency.
4. The appeal is contested by the Republic.



5. This is a first appeal to the High Court. I have re-evaluated the record and drawn my own conclusions. *Njoroge v Republic* [1987] KLR 19, *Okeno v Republic* [1972] EA 32, *Kariuki Karanja v Republic* [1986] KLR 190.
6. I am satisfied that the plea of guilt was unequivocal. I have also stated that the appellant does not challenge his conviction.
7. Section 354 (3) of *Criminal Procedure Code* empowers the court to alter the finding, maintain the sentence, or with or without altering the finding reduce or increase the sentence. The parameters were well set out in *Macharia v Republic* [2003] 2 E A 559.
7. The learned trial Magistrate considered that the appellant was a first offender. But she was not impressed by the conduct of the appellant. The property destroyed belonged to his mother who made an emotional victim impact statement. Surprisingly, the appellant disowned his own mother. His sister confirmed to the court that the complainant was indeed their blood mother. The appellant also misled the court that he had a young child and was attending college. The plea for clemency before this court must be looked at through those lenses.
8. The penal provisions provided for a sentence of up to 5 years on the first count and 6 months on the second. I readily find that the two sentences were well within the law and in all the circumstances of this offence, they cannot be termed as excessive.
9. However, the two offences arose in the course of the same transaction. In that regard, I find that the justice of the case demands that they run concurrently and not consecutively as ordered by the trial court.
10. I will thus uphold the conviction. The sentence handed down is partly set aside but only to the extent that the two sentences of 3 (three) years and 4 (four) months shall now run concurrently. In addition, the period spent in custody from his arrest on September 23, 2021 to the date of sentence on September 27, 2021 (5 days) shall be deducted from the sentence.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MAY 2023.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of: -

The appellant (in person).

Mr Kiragu for the respondent instructed by the office of the Director of Public prosecutions.

Mr E Ombuna, Court Assistant.

