



REPUBLIC OF KENYA



**KENYA LAW**  
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**Lomo v Republic (Criminal Appeal E003 of 2023)  
[2023] KEHC 17244 (KLR) (11 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17244 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITALE  
CRIMINAL APPEAL E003 OF 2023  
AC MRIMA, J  
MAY 11, 2023**

**BETWEEN**

**JACKSON ERUPE LOMO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal on sentence by Hon. J. K. Ng'arng'ar Chief Magistrate in Kitale Chief Magistrate's Court Criminal Case No. 355 of 2019 delivered on 5th January, 2023)*

**JUDGMENT**

1. The Appellant herein, Jackson Erupe Lomo, was charged with the offence of Robbery with violence contrary to Section 296(2) of the *Penal Code*. He denied the offence and a trial was held where he was found guilty as charged, convicted and sentenced to death.
2. The Appellant filed an appeal being High Court at Kitale Criminal Appeal No. 94 of 2019. This Court allowed the appeal on sentence and ordered that the Appellant be re-sentenced by the trial Court.
3. On 5<sup>th</sup> January, 2023, the Appellant was re-sentenced to 20 years imprisonment. The Court considered the contents of a Sentence Review Report which recommended a custodial sentence due to a hostile environment at home.
4. The Appellant lodged the instant appeal against the re-sentencing.
5. In his submissions, the Appellant claimed that the sentence was very harsh. He prayed for a lesser sentence.
6. The State left the matter to the Court.
7. This Court is the first appellate Court.



8. 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.
9. I have considered this matter with caution and care. The sentencing Court received the Appellant's mitigations. The victim was seriously injured during the ordeal.
10. Sentencing is a crucial part in the criminal process and the administration of justice. It is also discretionary. In exercising the discretion, a sentencing Court is called upon to be guided by a raft of considerations. Such are discussed at length in the Sentencing Guidelines published on 29<sup>th</sup> April, 2016 vide Gazette Notice No. 2970 by the Hon. The Chief Justice of the Republic of Kenya who is also the Chairperson of the National Council on the Administration of Justice (NCAJ) and in case law including the Supreme Court in Petition No. 15 of 2015 *Francis Karioko Muruatetu & another v Republic* [2017] eKLR.
11. This Court does not see how the sentencing proceedings are to be impugned. The Court exercised its discretion correctly more so given the age of the victim and the injuries inflicted on her.
12. In the end, the following final orders of this Court do hereby issue: -
  - a. The Appeal against the sentence is dismissed.
  - b. The sentence to run from 25th January, 2019 when the Appellant was charged.
  - c. This file is hereby marked as closed.

Orders accordingly.

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

**A. C. MRIMA**

**JUDGE**

Judgment delivered in open Court and in the presence of: -

Jackson Erupe Lomo, the Appellant in person.

Miss Kiptoo, Learned Prosecution Counsel instructed by the Office of the Director of Public Prosecutions for the Respondent.

Regina/Chemutai – Court Assistants.

