



REPUBLIC OF KENYA



KENYA LAW
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**Mapengo v Republic (Criminal Appeal E090 of 2022)
[2023] KEHC 17239 (KLR) (11 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17239 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL E090 OF 2022**

AC MRIMA, J

MAY 11, 2023

BETWEEN

WYCLIFFE KITUI MAPENGO APPELLANT

AND

REPUBLIC RESPONDENT

*((Being an appeal on sentence arising from the conviction and sentence
by Hon. S. N. Makila, Principal Magistrate in Kitale Chief Magistrate's
Court Traffic Case No. 330 of 2019 delivered on 15th December, 2022))*

JUDGMENT

1. The Appellant herein, Wycliffe Kitui Mapengo, was charged with four offences under the [Traffic Act](#). They were causing death by dangerous driving, reckless driving, driving motor vehicle on a public road without driving licence and driving a motor vehicle on a public road under the influence of alcohol.
2. He denied all the offences and a trial was conducted where he was found guilty of causing death by dangerous driving, driving motor vehicle on a public road without driving licence and driving a motor vehicle on a public road under the influence of alcohol. He was acquitted on the offence of reckless driving as no sufficient evidence was tendered.
3. On the consideration of mitigations, the Appellant was sentenced to a fine of Kshs 200,000/= and in default to serve 3 years imprisonment on the offence of causing death by dangerous driving. Further, his licence, if any, was cancelled and he was barred from driving any Public Service Vehicle in the country.
4. The Appellant was also sentenced to a fine of Kshs 20,000/= on the offence of driving motor vehicle on a public road without driving licence. In default he was to serve 6 months imprisonment. Lastly, he was sentenced to a fine of Kshs 50,000/= on the offence of driving a motor vehicle on a public road under the influence of alcohol. In default, to serve 1-year imprisonment.



5. The prison sentences were to run consecutively if the fines were not paid.
6. Being dissatisfied with the convictions and sentences, the Appellant lodged an appeal against both limbs.
7. The appeal was subsequently admitted for hearing. At the hearing of the appeal, the Appellant abandoned the appeal on conviction and only pursued the appeal on sentence.
8. In his submissions, the Appellant claimed that the sentence was very harsh and that the trial Court erred in not considering the sentencing principles in the Judiciary Policy on Sentencing. He prayed for a review of the sentences and that he be released on non-custodial sentences.
9. The State left the matter to the Court.
10. This Court is the first appellate Court.
11. 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.
12. I have considered this matter with caution and care. The trial Court was careful in the manner it conducted the sentencing proceedings.
13. The Court considered the nature of the offence and the mitigation, among other relevant actors.
14. 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 April 29, 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.
15. This Court does not see how the sentencing proceedings are to be impugned. It appears that the Appellant was intent in seeking a review of the sentence. That, he may pursue in an appropriate forum.
16. In the end, the following final orders of this Court do hereby issue: -
 - a. The Appeal against the sentence is dismissed.
 - b. 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: -

Wycliffe Kitui Mapengo, 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.

