



REPUBLIC OF KENYA



KENYA LAW
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**Kahindi v Republic (Criminal Appeal 62 of 2018)
[2023] KEHC 20192 (KLR) (10 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20192 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL APPEAL 62 OF 2018**

**SM GITHINJI, J
JULY 10, 2023**

BETWEEN

SAFARI KAINGU KAHINDI APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an Appeal against the original conviction and sentence in respect
of Cr No.527 of 2014 in the Resident Magistrate Court at Malindi)*

JUDGMENT

1. Safari Kaingu Kahindi, the appellant herein, was charged in the lower court with the offence of grievous harm contrary to section 234 of the *Penal Code*.
2. The particulars of this offence being that on April 10, 2014 at Mkono wa Jogoo village in Magarini Sub-County, the appellant herein did grievous harm to Kazungu Charo Karisa.
3. In this case the prosecution called five witnesses and closed their case. On August 4, 2017 the court ruled that the appellant had a case to answer. The appellant who was out on cash bail of 15,000/= however absconded before offering his defence. The said cash bail was forfeited and warrant of arrest issued on August 21, 2017. On September 17, 2017 he was arraigned in court under warrant of arrest. He offered an explanation which was not satisfactory and was ordered to remain in custody during trial. On May 15, 2018 he opted to change plea. The charge was read to him in Kiswahili language to which he pleaded guilty. The court entered a plea of guilty. The prosecutor read the facts as follows; -

“On 10/4/2014 at about 4.00Pm the complainant who live at Njongoo Magarini was at his house, the complainant being a neighbour to the accused, the accused went to the complainant and alleged that goats belonging to him had eaten up his (accused) casuarina trees. The accused then stabbed the complainant several times on the stomach. The



complainant shouted prompting members of the public to come to his aid and took him to Malindi District Hospital on 10/4/2014 and discharged after 11 days even before he healed. The complainant then reported at the police station at Marereni, given P3 form which was filled at Malindi District Hospital. The injuries were classified as “grievous harm”. The police officers at Marereni took statements of the complainant and witnesses and on 12/9/2014 the accused was arrested, charged with the offence before this court and brought to court. The P3 form is in court dated 10/5/2014 (Exhibit 1). The treatment notes are also in court (Exhibit 2) and discharge summary (Exhibit 3).

4. To the foregoing facts the appellant answered, “it’s true”. He was thus convicted on his own plea of guilty.
5. The prosecutor stated she had no previous records.
6. The appellant in mitigation stated that he has a wife. He alleged his grandmother died on the material day and his mother in law helped him with timber to make a coffin. Later the mother in law took the coffin, claiming for her timber. He then clarified that his wife is the one who removed the coffin to remove timber.
7. The trial court weighed the foregoing and sentenced the appellant to serve 30 years in prison.
8. Despite the appellant having pleaded guilty to the offence, he appealed to this court on the following grounds; -
 1. That he did not agree with the facts and so did not plead guilty.
 2. Prosecution had not properly investigated the case.
 3. Trial court did not consider that nobody saw him committing the offence.
 4. That he was not given time to offer his defence.
9. The appeal was canvassed by way of written submissions. The respondent filed their submissions and though the appellant claimed to have sent his via email, the court never received and nor was it able to ascertain the claim.
10. The issues for determination in this appeal are just two; -
 1. Whether the plea of guilty by the appellant is equivocal.
 2. Whether the sentence of 30 years imprisonment given the circumstances is harsh and excessive.
11. In the relied case by the prosecution, the case of *Olel v Republic*[1989] KLR 444, the Court held that;-

“Where a plea is unequivocal, an appeal against conviction does not lie. Section 348 of the Criminal Procedure Code (Cap 75) does not merely limit the right of appeal in such cases but bars it completely.”
12. In this appeal the appellant himself after he had been placed on his defence opted to change plea.
13. The trial court in the new plea taking, followed all the legal procedures laid out in law and more so as enunciated in the celebrated decision of *Ada v Republic* [1973] EA 445. The appellant herein pleaded guilty to the statement of the offence and its particulars and as well to the facts of the case. The plea of guilty is unequivocal. He was therefore as earlier on considered, only entitled to an appeal against



the sentence of which from his grounds of the appeal, did not. Nevertheless, I will proceed to consider the validity of the sentence meted.

Section 234 of the Penal Code provides that; -

“ Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”

14. The appellant herein caused grievous harm to his neighbour using a knife and a club, whereby he cut him several times in the stomach. He did so on allegation that the victim’s goats had fed on his casuarina trees worth 7,000/=. The appellant pleaded guilty at an advanced stage in his case after he had been placed in his defence and absconded leading to cancellation of this bail and forfeiture of cash bail. He therefore deserved no significant discount on the sentence for saving court’s time and resources in the said plea of guilty. The 30 years sentence is within what the law provides for and this court cannot rightly interfere with the trial court’s discretion in sentencing unless it’s shown that the sentence in place is either illegal, harsh or excessive. Such has not been established or demonstrated. The appeal therefore lacks merit and is hereby dismissed.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 10TH DAY OF JULY, 2023

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S.M.GITHINJI

JUDGE

In the Presence of

1. Ms Mkongo for the State
2. The Appellant

