



**Kinyua v Republic (Criminal Appeal E053 of 2022)
[2023] KEHC 20093 (KLR) (5 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20093 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL APPEAL E053 OF 2022
LM NJUGUNA, J
JULY 5, 2023**

BETWEEN

FIDESIO KINYUA APPELLANT

AND

REPUBLIC PROSECUTOR

JUDGMENT

1. The appellant herein was charged before the Senior Principal Magistrate’s Court at Siakago in Criminal Case No. 482 of 2020. He was charged with the offence of grievous harm contrary to section 234 of the *Penal Code*. The particulars of the said offence being that on 26.07.2020 at Mavuria Location, Iria-Murai Sub Location in Mbeere South Sub-County within Embu County, unlawfully did grievous harm to Stellah Wanjiru. He pleaded guilty to the said charge and the trial court proceeded to sentence him to serve 10 years imprisonment.
2. The crux of the matter herein lies on the fact that the accused person attacked his mother, Stellah Wanjiru at night and in the process, broke the door to her house, beat her and stole from her the land ownership documents; his deceased father’s identity documents and in the process caused grievous harm on the said Stellah Wanjiru who suffered fractures.
3. The appellant having been aggrieved by the said sentence, filed the appeal herein citing grounds as enunciated on his amended petition filed on 21.03.2023.
4. The appellant thus urged this court to set aside the sentence as he viewed the same as harsh and excessive and provide an opportunity for reconciliation.
5. The court directed that the appeal be canvassed by way of written submissions and the parties complied.



6. The appellant conceded that he pleaded guilty to the charge as he was not willing to continue with the trial as against his mother. The appellant submitted that the trial court convicted him on his own plea of guilty without considering that he was a first offender who ought to benefit from a least severe punishment taking into account that the matter involved family members. It was his argument that the trial court ought to have given him a chance to reconcile with his mother as they had already talked in regards to slaughtering a goat to avert the would be misfortunes that could visit him.
7. He argued that the trial magistrate erred in law by failing to comply with section 216 and 329 of the CPC as there was no victim impact report filed before the court to guide the court in terms of sentencing. The appellant urged this court to consider the fact that he committed the offence while under the influence of drugs but that he has since been rehabilitated and therefore qualified for a non-custodial sentence; he therefore urged this court to find so.
8. The respondent on the other hand submitted that the appeal herein is devoid of merit and the same ought to be dismissed. That the grounds of appeal are not merited since sentence by a trial court is discretionary and an appellate court would only interfere where it is demonstrated that the sentence imposed is not legal or is harsh and excessive as the same amounted to miscarriage of justice. The respondent relied on the case of Shadrack Kipchoge Kogo vs Republic eKLR where the Court of Appeal pointed out that in order for a trial court's sentence to be overturned, it must be shown that the trial court made an error in law, considered irrelevant factors or that the sentence was excessive and disproportionate.
9. It was further submitted that the trial court took all the factors into account when determining the appellant's sentence and further, the said sentence of ten years meted out against the appellant was lenient in the circumstances and the same was within the law. In the end, this court was urged to dismiss the appeal herein for want of merit.
10. I have considered the grounds of appeal, the submissions and authorities relied upon by the respective parties.
11. The appeal herein in my view concerns sentence only. This is so since the appellant submitted that the same was harsh and excessive; the respondent on the other hand submitted that the appeal is not merited as the sentence by a trial court is discretionary and an appellate court would only interfere where it is demonstrated that the sentence imposed is not legal or is harsh and excessive and the same amounted to miscarriage of justice.
12. In the circumstances therefore, this court seeks to find whether under the given circumstances, the trial court meted out against the appellant a harsh and excessive sentence.
13. Reviewing the record herein, it is clear that the appellant was charged with the offence of grievous harm contrary to section 234 of the Penal Code which stipulates as: Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.
14. The question therefore is, was the sentence harsh or highly excessive? The sentence in question is 10 years.
15. In my considered view, an appropriate sentence depends on the facts and circumstances of each case, and inter alia, the court must consider the gravity of the crime, motive for the crime, nature of the offence, manner of commission of the crime, and other attendant circumstances. (*State of M.P. vs Bablu Natt* {2009}2S.C.C 272 Para 13).



16. See also *Alister Anthony Pereira vs State of Maharashtra*, [2012] 2 S.C.C 648 Para 69 that: -

“Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of an appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of the crime and the manner in which the crime is done. There is no straightjacket formula for sentencing an accused on proof of crime. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.”

17. In the case herein, the complainant narrated how the appellant broke into her door, entered her house and thereafter started beating her. That in the process, he blocked her mouth to ensure that she could not call for help. The complainant in her evidence stated that the appellant hit her with a lamp on the head and upon falling off the bed, hit her leg thus causing a fracture. Additionally, the appellant hit her leg at the middle thus further causing double fracture. In her evidence, the complainant narrated how the appellant removed her clothes and started washing off the blood; thereafter, took her jacket and disposed the same into the toilet. The appellant thereafter took land ownership documents and a death certificate belonging to her deceased’s husband.
18. From the record, the degree of injury was assessed as harm and the same was evidenced by the medical report particularizing the nature of harm. In response, the appellant did not controvert the said allegations but instead sought for forgiveness and further stated that he only acted as such for the reason that her sister had been selling beer at their home even after his father had directed otherwise. He further stated that he planned to slaughter a goat once he is released and that he shall never repeat the same again.
19. The trial court noted that owing to the circumstances under which the offence was committed, there was a need for a deterrence sentence for the reason that the appellant’s actions were clear indication of intention to kill.
20. In the case of *Musyimi Ndava vs Republic* [2019] eKLR, the appellant was sentenced for 35 years having been charged and convicted with the offence of causing grievous bodily harm contrary to section 234 of the Penal Code; the Court of Appeal in upholding the sentence stated that: there is nothing on record to show the trial court erred in the exercise of its discretion in meting out the 35-year term of imprisonment. There is also nothing on record to show the learned judge erred in upholding the sentence.
21. Having considered the facts herein, it is outright that the appellant attacked an innocent helpless parent thus causing her unnecessary injuries. In regards to the alleged harsh sentence, the appellant did not contend that the sentence meted out was illegal or unlawful but only submitted that the problem herein could be amicably solved at home without the trial court imposing a custodial sentence. [See *Wanjema vs Republic* [1979] EA 493].
22. Having noted that the appellant did not prove that the sentence by the trial court was unlawful or illegal, it is my humble finding that the appeal herein lacks merit and the same is hereby dismissed.
23. It is so ordered.

DELIVERED, DATED AND SIGNED AT EMBU THIS 5TH DAY OF JULY, 2023.

L. NJUGUNA

JUDGE



..... for the Appellant

..... for the State

