



REPUBLIC OF KENYA



**Kinyili v Republic (Criminal Appeal E061 of 2022)  
[2023] KEHC 24240 (KLR) (16 October 2023) (Judgment)**

Neutral citation: [2023] KEHC 24240 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL APPEAL E061 OF 2022  
GMA DULU, J  
OCTOBER 16, 2023**

**BETWEEN**

**CALEB KIOKO KINYILI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the conviction and sentence in Criminal Case No. E079 of 2022 at  
Makindu Law Courts on 3rd February 2022 by Hon. J. D. Karani (RM))*

**JUDGMENT**

1. The appellant was convicted by the Magistrate's court at Makindu for the offence of threatening to kill contrary to section 223 (1) of the [Penal Code](#) (cap.63) on his own plea of guilty.
2. He was then sentenced to serve 36 months imprisonment.
3. Dissatisfied with the sentence, the appellant has come to this court on appeal. His grounds of appeal are actually against both conviction and sentence.
4. The appeal was canvassed through submissions. In this regard, I have perused and considered the submissions filed by the appellant as well as the submissions filed by the Director of Public Prosecutions.
5. I note that in the written submissions, the appellant has limited his submissions to the severity of sentence. I thus take it that the appellant has abandoned his appeal against conviction.
6. The appellant has relied on the case of [Francis Kariokor Muruatetu = Versus = Republic](#) (2015) eKLR and the Judiciary Sentencing Policy and Guidelines and urged this court to consider all relevant factors and reduce the sentence imposed.



7. The Director of Public Prosecutions on their part submitted that the sentence imposed was not harsh or excessive as the appellant had threatened to kill someone, and the court observed that he was not remorseful.
8. The maximum sentence for the offence of threatening to kill under section 223(1) is ten (10) years imprisonment.
9. When the appellant was asked to mitigate, he said nothing. He was a first offender though and had pleaded guilty to the offence and did not waste the court's time.
10. In those circumstances, the fact that the appellant did not say anything in mitigation, did not necessarily confirm that he was not remorseful. Maybe yes, maybe no. He might as well have been overwhelmed by the unfolding events in the criminal trial, being a layman. I will thus reduce the sentence but with a warning to the appellant.
11. Consequently and for the above reasons, I allow the appeal, set aside the sentence imposed and order that the appellant will serve 24 months imprisonment. He is however warned not to repeat similar offences.

**DATED, SIGNED AND DELIVERED THIS 16<sup>TH</sup> DAY OF OCTOBER 2023 VIRTUALLY AT VOI.**

**GEORGE DULU**

**JUDGE**

**In the presence of:-**

Alfred – Court Assistant

Appellant

Mr. Kazungu for State

