



**Republic v Kiplang'at (Criminal Case 1515 of 2023)
[2023] KEMC 317 (KLR) (1 August 2023) (Ruling)**

Neutral citation: [2023] KEMC 317 (KLR)

**REPUBLIC OF KENYA
IN THE NAKURU LAW COURTS
CRIMINAL CASE 1515 OF 2023
PA NDEGE, SPM
AUGUST 1, 2023**

BETWEEN

REPUBLIC PROSECUTION

AND

FRANKLINE KIPLANG'AT ACCUSED

RULING

1. Hillary Kipngeno, the complainant, appeared in court and informed the court on oath that he has willfully forgiven the accused person. He avers that Frankline Kiplang'at, the accused herein, assaulted him and stole ksh.30,000 from him, but that he wants the court to forgive him. That he would not lodge the complaints again.
2. The application by the complainant herein, is for reconciliation. Reconciliation and alternative Dispute Resolution should be promoted as per article 159 (2) (c) of the *constitution* of Kenya, which provides that alternative forms of dispute resolution including reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms, shall be promoted.
3. The issue herein is however, whether all criminal cases can be terminated through the act of reconciliation and forgiveness as applied for herein. Under section 204 of the Criminal procedure code, a complainant may withdraw the complaint before the court make a final order in the matter and the court has discretion as to whether to allow or reject withdrawal, when satisfied of existence or otherwise of sufficient grounds for permitting such a withdrawal.
4. However, forgiveness and reconciliation are limited by section 176 of the Criminal procedure code, which provides that court can promote reconciliation and encourage and facilitate the settlement in an amicable way of proceedings for common assault or for any other offence of a personal or private nature not amounting to a felony and not aggravated in degree.



5. The accused person, Frankline Kiplang'at, is alleged to have assaulted causing actual bodily harm and stealing from Hillary Kipng'eno contrary to section 251 and section 279 (a) of Penal Code respectively.
6. Having found that Reconciliation and/or forgiveness is limited under section 176 of Criminal procedure code to misdemeanors and not felonies or aggravated offences, the remaining issue herein is whether assault causing actual bodily harm and stealing from a person are misdemeanors or not aggravated offences?
7. Section 251 of the Penal Code provides that any person who commits an assault occasioning actual bodily harm is guilty of misdemeanor and liable to imprisonment for 5yrs. This directly makes it a misdemeanor. Section 279 (a) of the Penal Code provides that If theft is committed under any of the circumstances following, that is to say, if the thing is stolen from the person of another, the offender is liable to imprisonment for 14yrs.
8. Bearing in mind the provision of article 159(2)(c) of the constitution of Kenya that alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted and in the interest of justice, I consider the fact that the complainant is willing to forgive the accused, based on his application on oath and being no objections from the prosecution.
10. In conclusion, I allow application by the complainant to forgive accused herein and this matter does not need to proceed for hearing. The upshot is that all the proceedings against the accused person are hereby terminated under section 176 of the Criminal Procedure Code. He should therefore be released from custody forthwith unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT NAKURU IN OPEN COURT THIS 01ST DAY AUGUST OF 2023

ALOYCE PETER NDEGE

SENIOR PRINCIPAL MAGISTRATE

In the presence of;

Court interpreter: Janet

Present for prosecutions: Chinga

Accused person: Present

Complainant/ victim: Present

