



**Razak v Republic (Criminal Appeal E007 of 2025)  
[2025] KEHC 15240 (KLR) (29 October 2025) (Judgment)**

Neutral citation: [2025] KEHC 15240 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAPENGURIA  
CRIMINAL APPEAL E007 OF 2025  
RPV WENDOH, J  
OCTOBER 29, 2025**

**BETWEEN**

**ABDUL RAZAK ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. Abdul Razak, the Appellant herein was convicted on his own plea on two counts as follows:-

Count I Assault causing actual bodily harm contrary to Section 251 of the Penal Code. The particulars of the charge are on 30/10/2022 at Suam Location within West Pokot County, occasioned actual bodily harm to Mary Cheparkon.

Count II Threatening to kill contrary to Section 223 of the Penal Code. The particulars of the offence are that on 30/10/2022, at Longarkau village, Suam Location in West Pokot County, without lawful excuse, uttered the words “Nataka kufika na maiti tatu kortini leo kabla ya saa saba” threatening to kill Mary Cheparkon, Upon conviction, the Appellant was sentenced as follows:-

Count – 5 years imprisonment.

I  
Count – 10 years imprisonment.

II  
The sentences were ordered to run consecutively.

2. The Appellant only appealed against the sentence. The grounds of appeal as follows:-

1. That the sentence was harsh and excessive and did not conform with the Judiciary sentencing guidelines.

2. That the court erred by ordering that the sentences run consecutively.



3. That the court failed to consider the Appellant's mitigation.

The Appellant prays that the sentence be set aside and he be set at liberty.

3. This being a first appeal, this court is required to examine all the evidence tendered in the trial court, evaluate it and arrive at its own conclusions. The court is guided by the decision of *Okeno -vs- Republic* [1972] EA 32.
4. The Appellant filed submissions urging the court to exercise its discretion while taking into account the Judiciary Sentencing Guidelines, the age of the appellant, his background, the impact of the sentence on the family and the Appellant's reformation journey while in prison.
5. He further submitted that the court failed to consider that he was a young man with a family and that he was drunk at the time he committed the offence. The Appellant also urged that he has undergone rehabilitation courses which will help with reintegration in the society and he should be given a chance. He urged the court to consider the case of *Noah Mwaita Ainea -vs- ODPP* [2021] and *Alfred Otieno -vs- Republic* [2020] where the court reduced the sentences based on the Judiciary Sentencing Policy Guidelines.
6. The Respondent filed submissions opposing the appeal on sentence. The prosecution counsel submitted that the court imposed the maximum sentences after addressing its mind to the pre-sentence report which informed that the Appellant was a habitual offender having been convicted several times including the offence of murder for which he was placed on probation upon conviction. Counsel submitted that the Appellant needs a deterrent sentence to keep him away from endangering his family members lives. Counsel urged the court to dismiss the appeal.
7. From the Appellant's grounds of appeal, he only complains about the sentence, not the conviction.
8. Sentencing is an exercise of the court's discretion as guided by *the Constitution* and the various laws and the Judiciary Sentencing Guidelines Policy 2016. Despite these guidelines sentencing remains the exercise of the courts discretion as stated by the Supreme Court in *Francis Karioko Muruatetu & Another -vs - Republic* (2017) eKLR. The court stated:-  

“(72) we wish to make it very clear that these guidelines in no way replace judicial discretion. They are advisory and not mandatory. They are geared to promoting consistency and transparency in sentencing hearings. They are also aimed at promoting public understanding of the sentencing process”.
9. Page 15, paragraph 4.1 of the sentencing Policy Guidelines provides as follows:-
  - i. Retribution: to punish the offender for his/her criminal conduct in a just manner;
  - ii. Deterrence; to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences;
  - iii. Rehabilitation; to enable the offender reform from his/her criminal disposition and become a law-abiding person;
  - iv. Restorative justice; to address the needs arising from the criminal conduct such as loss and damages;
  - v. Community Protection; to police the community by incapacitating the offender.
  - vi. Denunciation; to communicate the community's condemnation of the criminal conduct.



- vii. Reconciliation; to mend the relationship between the offender the victim and the community.
  - viii. Reintegration; To facilitate the re-entry of the offender into the society.
10. In sentencing the court also considers various mitigating factors. (See Muruatetu Case)
1. Age of the offender;
  2. Being a first offender;
  3. Whether the offender pleaded guilty;
  4. Character and record of the offender;
  5. Commission of the offence in response to gender-based violence;
  6. Remorsefulness of the offender;
  7. The possibility of reform and social re-adaptation of the offender;
  8. Any other factor that the court considers relevant.
11. This court can only interfere with the lower court's exercise of discretion in sentencing of the trial court considered irrelevant factors as failed to consider relevant factors or if the sentence is excessively high or low as to amount to a wrong exercise of discretion.
12. In the instant case, after the Appellant had been convicted, the prosecution addressed the court as follows: - that the Appellant had been convicted for threatening to kill in Cr. 508/2011 was convicted and sentenced to six (6) months imprisonment; that in Cr. 273/2020 he was convicted and sentenced to one year imprisonment; in Cr.869/2019, he was convicted for murder and placed on probation for three (3) years. The other charges were withdrawn. The Appellant admitted that all that the prosecutor stated was true. He then told the court that he had a young family of a wife and children, that he had been drunk when he committed the offence.
13. The court observed that it had considered the Appellant's mitigation, the circumstances of the offence; that the appellant is a habitual offender and found him to be incorrigible and should be given a custodial sentence to keep him away from his family whom he was endangering. Clearly, the Appellant had not benefited from the earlier convictions and sentences and was not ready to change.
14. Under Section 251 of the Penal Code, upon conviction the maximum sentence is 5 years imprisonment. In this case, the complainant suffered minor injuries and I find the sentence of five (5) years to be on the higher side. I set aside the five (5) years and substitute it with three (3) years imprisonment.
15. As regards Count II upon conviction under Section 223 of the Penal Code, one is liable to imprisonment for ten (10) years. Taking into account the fact that the Appellant had been convicted for a similar offence, a deterrent sentence was called for. From the circumstances of the case, I find the sentence of ten (10) years is on the higher side. I hereby set it aside and substitute it with seven (7) years imprisonment.
16. The appeal therefore partially succeeds and the Appellant will be sentenced as follows:-  
Count I – three (3) years imprisonment.  
Count II – seven (7) years imprisonment.
17. The sentences will run consecutively and will commence on 31/10/2022. It is so ordered.



**DELIVERED, DATED AND SIGNED AT KAPENGURIA THIS 29<sup>TH</sup> DAY OF OCTOBER, 2025**

**R. WENDOH**

**JUDGE**

Judgment delivered in the presence of:-

Mr. Majale for the State

Appellant – Present virtually

Juma/Hellen – Court Assistants

