

**IN THE COURT OF
APPEAL AT KISUMU**

(CORAM: ASIKE-MAKHANDIA, OMONDI & KIMARU JJ.A.)

CRIMINAL APPEAL NO. 84 OF 2020

BETWEEN

KEVIN WANYONYI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

*(Being an appeal from the judgment of the High Court of Kenya at
Bungoma (Ali-Aroni, J.) dated 25th January, 2018*

in

HCCRA No. 19 of 2011)

JUDGMENT OF THE

COURT

1. Kevin Wanyonyi, the appellant herein, was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars in the information were that on 4th April, 2011 at Kamukuywa Location within Bungoma County, the appellant murdered Robinson Masinde (the deceased).
2. The appellant pleaded not guilty, and the prosecution called 5 witnesses to prove its case. At the conclusion of the trial, he was

found guilty of the offence, convicted, and sentenced to 20 years imprisonment.

3. Dissatisfied, the appellant now appeals to this Court against the sentence which he claims was arrived at without regard to his mitigating factors.
4. In support of the appeal, the appellant basically invokes the determination in the case of **Francis Kariokor Muruatetu and Another vs. Republic [2017] eKLR**, where through its dictum, the courts can now exercise discretion in sentencing. It is submitted that through this, the court must further have in mind the objectives of the Sentencing Policy Guidelines, 2023.
5. It is further contended that the appellant's sentence is unjust, severe and cruel thus contrary to the provisions of Articles 27[2] and 28 of the Constitution; that in arriving at the sentence, the learned judge failed to consider the mitigating factors raised by the appellant.
6. In reply, the respondent argues that in sentencing the appellant, the learned judge considered the appellant's plea in mitigation; and drawing from the case of **John Bundi Koome vs. Republic, Nyeri Criminal Appeal No. 22 of 2017**, the respondent maintains that the sentence meted out to the appellant was proper and lawful as provided under the law.

7. It is the respondent's contention that in sentencing the appellant, the trial court took into consideration that he was of young age and thus sentenced him to 20 years imprisonment.
8. Having carefully considered the ground of appeal, the respective submissions and the record, the only issue for determination is whether the sentence meted on the appellant was legal.
9. It is now settled that sentence is a matter within the discretion of the trial court, and that it must depend on the facts of each case. On appeal, such as this, the court will not easily interfere with the sentence unless it is clearly excessive under the circumstances, or the trial court overlooked some important factor, or considered some wrong material, or acted on a wrong principle.
10. This position was stated succinctly by the Court of Appeal for East Africa in the case of **Ogola s/o Owoura vs. Reginum (1954) 21 270** as follows:

The principles upon which an Appellate Court will act in exercising its jurisdiction to review sentences are firmly established. The Court does not alter a sentence on the mere ground that if the members of the Court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily

interfere with the discretion exercised by a trial Judge unless, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor."

11. The principles guiding this Court on appeal in deciding whether or not to interfere with the sentencing discretion of the trial court were addressed by this Court again in the case of **Benard Kimani Gacheru vs. Republic [2000] eKLR** thus:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate Court will not easily interfere with sentence unless that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong materials, or acted on the wrong principle.”

12. At the center of this appeal is the appellant’s contention that the sentence of 20 years is harsh and excessive in the circumstances. He faults the trial court for failing to consider the mitigating factors he proffered. From the record, during the sentence hearing, the learned judge noted as follows:

“The enormous task before this aftermath is to sentence the accused for the offence of murder. The accused in his mitigation, says he is a young man and full of life. What a coincidence! He is found guilty of the murder of a young man. I suppose before his untimely death he must have been full of life also. There is no for this heinous crime. It is one of the worst offences under our laws. In the offence and the circumstances herein the accused deserves a harsh sentence. Accused will serve 20 years imprisonment.

13. Sentencing is a judicial function that must be exercised within the confines of the law, taking into account the gravity of the offence, the circumstances under which it was committed, and any mitigating or aggravating factors. The appellant argues that the sentence was harsh and excessive, warranting the appellate court's intervention. However, from the record, it is clear that the trial court exercised its discretion appropriately, imposing a sentence within the statutory framework.
14. This Court in ***Chai vs. Republic [2022] KECA 495 (KLR)*** reaffirmed that an appellate court may only interfere with a sentence if it is manifestly excessive or based on wrong principles.
15. A sentence is deemed harsh and excessive if it is disproportionate to the crime, fails to consider the offender's circumstances or violates fundamental rights. Courts will interfere with a trial court's sentencing discretion only if the sentence is manifestly excessive or if the trial court made a material error in principle.
16. There is no evidence to show that the learned Judge failed to take into consideration any material issue or that he disregarded any material factor. The learned trial Judge took

into account every matter that was urged before her and held that the appellant took the life of another young person and noted that injuries were very

severe such that ill will and malice aforethought must have accompanied the assault.

17. The sentence meted out was well deserved, within the law and proportionate to the crime committed. Consequently, we find no reason whatsoever to warrant interference with the sentence. Consequently, we are satisfied that the appeal lacks merit and is dismissed.

Dated and delivered at Kisumu this 19th day of December, 2025.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

H. A. OMONDI

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

*I certify that this is
a true copy of the
original.*

DEPUTY REGISTRAR