Kipchumba v Republic (Criminal Appeal E102 of 2023)
[2026] KEHC 2360 (KLR) (2 March 2026) (Judgment)

Neutral citation: [2026] KEHC 2360 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL APPEAL E102 OF 2023

RN NYAKUNDI, J

MARCH 2, 2026

BETWEEN

JIMMY JAMES KIPCHUMBA ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an Appeal from the conviction and sentence of Hon. Christine Menya delivered on 6th October 2023 in Eldoret Chief Magistrates' Criminal Case No. E035 of 2023)

JUDGMENT

1. The appellant was charged with the offence of threatening to kill contrary to section 223(1) of the Penal Code. The particulars of the offence were that on 8th December 2022 at Marriot area, Kapseret Sub County within Uasin Gishu County, without lawful excuse, he uttered the words 'hutafika January, nitakuua' threatening to kill Angeline Jepkosgei.

2. He was also charged with 1 count of stealing contrary to section 268 as read with section 275 of the Penal Code and one count of malicious damage contrary to section 339(1) of the Penal Code.

3. The prosecution called 6 witnesses whereas the accused person called 4 witnesses in his defence. Upon considering the evidence of the court, the trial court found the Appellant guilty of all 3 counts and sentenced him to serve 2 years imprisonment on count 1, and 6 months imprisonment on both count 2 and 3, to run consecutively.

4. Being aggrieved with the sentence and conviction, the appellant instituted the present appeal vide a Petition of Appeal filed on 24th October 2023 premised on the following grounds;

    1. That, the sentence meted upon me were harsh, unjust, unfair and inhuman.

    2. That, the charge sheet was defective.

3. That, the prosecution evidence was contradicted and fabricated.

4. That, the appellant was not accorded fair hearing.

5. That, sentence imposed was manifestly excessive as I rely on the high court petition no. E017/2021 At Machakos By G.v.odunga.

6. That, the trial magistrate grossly erred in law and facts by disregarding my alibi defense.

Prosecution evidence at the trial court

5. The complainant (PW1), Angeline Jepkosgei, who is the Appellant's mother, testified that on 8th December 2022 at about 7.30 p.m., the Appellant told her "hutafika January nitakuua" ("you will not live to see January; I will kill you"). He further declared that she would not celebrate Christmas, before violently destroying household property including her television, gas cooker, windows, and toilet pipes. PW1 was categorical that out of fear for her life she fled her home of 10 years and sought safety elsewhere.

6. PW2, Joseph Omollo (the Appellant's brother), testified that he was present when the Appellant arrived home drunk, threatened both him and their mother, and declared "enough was enough." The Appellant then cut the door with a panga, swore he was ready to die with anyone who resisted him, and caused further destruction. They were forced to evacuate their mother to the police station for her protection. PW2 also testified that the Appellant had a history of threatening family members, including himself and his wife, even through text messages.

7. PW3, Stella Ayugi testified that after their mother had been evacuated for safety, she found the home destroyed and essential items missing, including the TV and gas cylinder. She testified that neighbors identified the Appellant as the person who carried away the property, further illustrating his violent conduct and hostility towards the complainant.

8. PW4, Adam Mwabishi, a neutral family friend and businessman, provided crucial independent corroboration. He testified that he personally saw the Appellant arrive with a weapon and threaten to kill both PW2 and their mother. Alarmed by the seriousness of the threats, he advised PW2 to report the matter to the authorities immediately.

9. PW5, PC Andrew Etabo, the investigating officer, confirmed recovery of receipts for the stolen items and documented repeated complaints lodged by the complainant and her children against the Appellant. He further testified that when police attempted to arrest the Appellant, he threatened them with the same panga and told them they "should be ready to die."

Defence evidence at the trial court

10. The Appellant, Jimmy James Kipchumba, testified that on the material date he was producing music with a friend and later heard that he had injured his mother. Further, he alleged that his father left money (inheritance) which his sisters had squandered and that he went to the public trustee and that was why they were upset with him as he was the next of kin. He stated that they had tried to kill him and would send police to intimidate him and that they attempted to kill him in the cell and said that he had attempted suicide upon taking him to Moi Teaching and referral hospital. In cross examination, he denied having committed the offence and stated that his mother was lying.

11. DW2 was Patrick Aduka, a friend to the appellant, who testified that he was a producer and he was with the Appellant but he did not state the date as he could not recall.

12. DW3 was Felix Kosgey, a neighbor to the appellant. He testified that he was with the appellant on 8th December 2022, and that he was injured. He denied having heard the appellant state that he would kill his mother and that on the material date, people visited the appellant and threatened him.

13. DW4 was Bonaventure Shitubwa, a neighbor to the Appellant, who's evidence was that he knew the appellant but in cross examination, he stated that he did not know what happened.

14. The Appeal was canvassed by way of written submissions. The Appellant filed handwritten submissions whereas the state filed submissions dated 23rd October 2025 through Prosecution Counsel G. Kirenge.

Appellants' submissions

15. The appellant submitted that the prosecutions' evidence and witnesses were unreliable and contradictory. Further, that the trial court was biased and the court ignored all the issues he raised. That he was denied witness statements and copies of the proceedings. He submitted that he was intimidated by the police and was denied said statements and proceedings due to his complaints about the intimidation. He urged that he was sick and required treatment and further, that his mother is mentally unstable and needs his care and support.

Respondents' submissions

16. On whether the charge sheet was defective, Counsel urged that this ground is without merit. He cited Section 134 of the Criminal Procedure Code and further, urged that the elements of the offence, as set out in Martin Ng'ang'a Kamanu v Republic [2020] eKLR, are: a) That the accused uttered words amounting to a threat to kill; b) That such words were uttered without lawful excuse; and c) That the words were uttered in circumstances where the complainant reasonably perceived an imminent threat to life.

17. In the present case, the charge sheet clearly set out all the essential particulars required under Section 134 of the Criminal Procedure Code. It specified the offence as threatening to kill contrary to Section 223(1) of the Penal Code, identified the date and place of commission as 8th December 2022 at Marriot area, Kapseret Sub-County, Uasin Gishu County, and reproduced the exact words allegedly uttered by the Appellant, namely "hutafika January nitakuua." Most importantly, it identified the complainant, Angeline Jepkosgei, as the intended victim of the threats. These particulars were sufficient to inform the Appellant of the nature of the charge he faced and enabled him to prepare his defence effectively. The Appellant was therefore fully aware of the case he was facing. Further, he cross-examined six prosecution witnesses at length and mounted his own defence, which demonstrates that he understood the nature of the offence and particulars.

18. Counsel urged that the Court of Appeal in Yongo v Republic [1983] eKLR held that a charge sheet is only defective where it misleads the accused or causes a miscarriage of justice. Similarly, in Bernard Ombuna v Republic eKLR the Court reaffirmed that the test is whether the accused was prejudiced to the extent of being unable to understand the charge and mount a defence. In this matter, no prejudice was occasioned to the Appellant. The charge sheet met the legal threshold under Section 134 of Criminal Procedure Code, provided sufficient particulars, and enabled a fair trial. Accordingly, this ground of appeal must fail.

19. Counsel urged that the prosecution ably discharged its burden under Section 223(1) of the Penal Code, which criminalizes uttering threats to kill without lawful excuse. Counsel reproduced the complainants' evidence and urged that her account was corroborated by PW2, PW3, PW4 and PW5.

20. Unlike cases where a complainant merely asserts that words were uttered without proof of actual fear, here the threats were accompanied by violent, aggressive acts: destruction of property, brandishing of a weapon, assault on others, and resistance against police officers. These circumstances created a credible perception that the complainant's life was in imminent danger, thereby satisfying the second element under Martin Ng'ang'a Kamanu v Republic [2020] eKLR.

21. The defence offered by the Appellant did not raise any reasonable doubt. He alleged an alibi and family conspiracy over inheritance, yet produced no documentary evidence to support these claims. His own witnesses contradicted him: DW1, the music producer, could not recall the material date and admitted he was not present; DW2 conceded he did not witness the threats; and DW3 openly admitted he had no knowledge of the incident. Allegations of poisoning by police and mental unfitness of the complainant were speculative, uncorroborated, and rightly rejected by the trial court.

22. Counsel urged that courts have consistently held that minor inconsistencies do not vitiate a prosecution case. In Philip Nzaka Watu v Republic [2016! eKLR. the Court of Appeal emphasized that discrepancies are expected in human recollection and may even signify honesty rather than fabrication. Here, whether the exact words recalled were "Nitawamaliza" or "Nitawaua nyinyi", the core fact remained consistent:

23. The Appellant raised a defence of alibi, claiming that at the material time he was elsewhere, playing music with a friend and that his family fabricated the charges against him due to alleged inheritance disputes. Counsel urged that this defence was a mere afterthought and was rightly rejected by the trial court. He cited the case of Kiarie v Republic (1984) KLR, 739 and urged that in the present case, the prosecution called six witnesses, including the complainant, her children, an independent family friend, and the investigating officer. Their testimony consistently placed the Appellant at the scene on 8th December 2022, armed with a panga, issuing death threats, and destroying property. The Appellant's alibi witnesses failed to account for his whereabouts at the material time.

24. The prosecution's case was not only consistent but was further corroborated by the complainant's relocation from her home out of fear, the recovery of receipts for stolen property, and the Appellant's open threats even against the police. The alibi defence was therefore properly dismissed, as it did not raise any reasonable doubt.

25. On fabrication of charges, counsel urged that this defence was speculative and unsupported by credible evidence. At no point did the Appellant produce documentary proof of the alleged inheritance issues or any complaint lodged with relevant authorities to substantiate his claims. On the other hand, the prosecution adduced consistent and corroborated testimony. PW4 testified that he personally saw the Appellant arrive at the complainant's home armed with a weapon and heard him issue threats to kill both the complainant and PW2. His independent testimony squarely places the Appellant at the scene and directly contradicts the allegation of a family vendetta. Counsel placed reliance on the case of Ndungu Kimanyi v Republic (1979) eKLR in this regard.

26. On whether the appellant was accorded a fair trial, counsel urged that the record is clear that the Appellant was informed of the charge under Section 223(1) of the Penal Code, including the specific words alleged to have been uttered, the date, place, and the particular complainant. He fully participated in the trial: he cross-examined the prosecution witnesses at length, gave sworn defence testimony, and even called three defence witnesses to support his case. The learned trial magistrate carefully considered his defence alongside the prosecution's case before rendering judgment. It is therefore evident that the Appellant was accorded full enjoyment of his fair trial rights under Article 50. The claim that he was denied a fair hearing is without factual or legal foundation and should be dismissed.

27. Counsel posited that the sentence was lawful and lenient, citing the provisions of Section 223(1) of the Penal Code where the maximum sentence prescribed is ten years' imprisonment. In the present case, the Appellant was sentenced to five (5) years only which is half of the maximum penalty which cannot, by any standard, be said to be harsh or excessive. He urged that it was proportionate and lenient given the gravity of the offence.

28. Counsel urged the court to dismiss the appeal in its entirety.

Analysis & Determination

29. As a first appellate Court, I have subjected the evidence adduced before the trial magistrate to a fresh analysis and evaluation while giving due allowance for the fact that unlike the trial Court, I neither saw nor heard the witnesses. (See Okeno v Republic [1972] EA 32 and Gabriel Kamau Njoroge v Republic [1987] eKLR).

30. The following issues arise for determination;

    1. Whether the Charge was defective

    2. Whether the prosecution proved its case to the required standard

    3. Whether the sentence was harsh and excessive in the circumstances

31. The first issue for determination is; Whether the charge sheet was defective. The Appellant claimed that the charge sheet was defective however, in his submissions, he never addressed the issue. That notwithstanding, I shall delve into the merits of this ground of appeal.

32. In regard to what should be contained in a Charge Sheet, Section 134 of the Criminal Procedure Code provides as follows:

> " Every charge or information shall contain and shall be sufficient if it contains a statement of the specific offence or offences with which the accused person is charged, together with such particulars as may be necessary for giving reasonable information as to the nature of the offence charged."

33. In addition, it was held in Sigilani vs Republic, (2004) 2 KLR, 480 that:

> " The principle of the law governing charge sheets is that an accused should be charged with an offence known in law. The offence should be disclosed and stated in a clear and unambiguous manner so that the accused may be able to plead to specific charge that he can understand. It will also enable the accused to prepare his defence."

34. I have considered the charge sheet on record and it is evident that each of the charges were clearly stated and the particulars gave reasonable information as to the nature of the offence charged. For the main charge, the particulars even go to the extent of stating the actual words that the appellant uttered to wit; 'hutafika January nitakuua'. The second and third charges are equally clearly stated, and disclose an offence known in law and give reasonable information as to the nature of each offence. In the premises, I find no reason to interfere with the conviction on the basis of a defective charge sheet.

Whether the prosecution proved its case to the required standard

35. The main charge was that of threatening to kill contrary to section 223(1) of the Penal Code which provides:

> Any person who without lawful excuse utters, or directly or indirectly causes any person to receive, a threat, whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for ten years.

36. The elements that are to be established in the offence of threatening kill were set out by Kimaru, J. (as he then was) in Martin Ng'ang'a Kamanu v Republic [2020] eKLR as follows:

37. The prosecution was required to establish the following ingredients of the charge: that the Appellant without lawful excuse uttered words which amounted to a threat to kill the complainant. The uttering of these words must be made in the context that the complainant perceives that he is under threat of losing his life. The context must come out in the evidence that will be adduced by the prosecution witnesses and the explanation given by the accused in his defence.

38. The Complainant testified that the Appellant uttered the words 'hutafika January, nitakuua' which translated to English mean, in a nutshell, that she would not be alive in January as he would kill her. The words themselves are plain and direct in meaning and need no further interpretation. Additionally, PW2 and PW3 corroborated the evidence on the utterances, and intimated to the court that this was not the first instance of said threats. The Appellant provided no evidence in rebuttal of the same and further, the evidence of his witnesses provided no refuge. Therefore, I find that the prosecution proved its case beyond reasonable doubt on the charge of threatening to kill and the conviction was safe.

39. The Appellant was also charged with the offence of stealing contrary to section 268 as read with 275 of the Penal Code. The offence of stealing has been defined under Section 268(1) of the Penal Code which provides that:

> " A person who fraudulently and without claim of right takes anything capable of being stolen, or fraudulently converts to the use of any person, other than the general or special owner thereof, any property, is said to steal that thing or property."

40. PW1 testified that the Appellant attacked the home destroyed her items and she fled. Upon PW3 coming home, she realized that some of the items were missing including the television and the gas cylinder. PW6, a brother to the Appellant, testified that on the material date, he witnessed the appellant take away the stolen items from PW1's house and further, PW5, the investigating officer, produced the receipts of the items that were missing thus corroborating the evidence of PW1 and PW3.

41. In the case of Katana Kitsao v. Republic [2003] eKLR, P.M Tutui observed that

> " The main ingredient for a charge of stealing is "taking anything capable of being stolen fraudulently or without claim of right". Nowhere is the use of violence of any degree or with an intention of accomplishing the mission incorporated."

42. Having considered the totality of the evidence tendered in court and the defence of the Appellant, I find no reason to interfere with the finding of the court on the offence of stealing. It is evident that the Appellant was present at the scene and he was seen by three witnesses carting away the items that are stated in the charge sheet. In the premises, the conviction on the count of stealing is safe and is hereby upheld.

43. The Appellant was additionally charged with the offence of causing malicious damage contrary to section 339 of the Penal Code. Section 339(1) of the Penal Code states as follows:

> " Any person who wilfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanour, and is liable, if no other punishment is provided, to imprisonment for five years."

44. The elements of the offence were laid out in Simon Kiama Ndiagui vs. Republic (2017) eKLR, Ngaah J. held that-

> 'In order to convict the court must be satisfied that, first, some property was destroyed; second, that a person destroyed the property; third that the destruction was wilful and therefore there must be proof of intent; and fourth, the court must also be satisfied that the destruction was unlawful.

45. As regards the first condition, in Simon Kiama Ndiangui vs Republic (supra) the Learned Judge held:- "

> " My take on this issue is that ownership of the property is a relevant but not the defining factor; it may be taken into account amongst other evidence that tends to establish that the offence was committed. It follows that failure to prove ownership is not fatal to the prosecution case and to this extent I agree with the learned counsel for the state."

46. PW1, the complainant, and the Appellants' mother testified that there was destruction of property on the material date PW2 testified that he was at home on 8th December 2022 when the Appellant came to their home and began threatening his mother, cutting the door with a panga. PW5 visited the scene and took photographs of the scene and confirmed the damage that had occurred, corroborating the testimonies of the complainant and PW2. It is my considered view that the prosecution proved that there was property which was destroyed, and that the Appellant was the person who had destroyed said property, and finally, that the destruction was unlawful. I therefore find that the conviction on this count was safe.

Whether the sentence was harsh and unlawful.

47. The prescribed sentence for threatening to kill is provided under section 223(1) of the Penal Code which provides;

> (1) Any person who without lawful excuse utters, or directly or indirectly causes any person to receive, a threat, whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for ten years.

48. On this offence, the Appellant was sentenced to serve 2 years' imprisonment which was within the provided sentence and is therefore lawful.

49. The prescribed sentence for stealing is provided for under section 275 of the Penal Code which provides as follows;

> Any person who steals anything capable of being stolen is guilty of the felony termed theft and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for three years.

50. The prescribed sentence of malicious damage to property is governed by section 339(1) of the Penal Code which provides as follows;

(1) Any person who willfully and unlawfully destroys or damages any property is guilty of an offence, which, unless otherwise stated, is a misdemeanor, and is liable, if no other punishment is provided, to imprisonment for five years.

51. On the 2nd and 3rd charges, the Appellant was sentenced to serve 6 months for each, which was within the lawful sentence provided by the law. It follows that the sentences were lawful and there is no reason to interfere with the same. The trial court directed that the same would be served consecutively and thus the total sentence amounts to three years imprisonment despite the Appellant claiming that it was a 5-year imprisonment in his petition of Appeal.

52. Having found that the convictions were safe and the sentences were lawful, it is my considered view that the appeal lacks merit and it is hereby dismissed in its entirety.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 2ND DAY OF MARCH 2026

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R. NYAKUNDI

JUDGE