# Biyegon v Republic (Criminal Case E049 of 2025) [2026] KEHC 2384 (KLR) (26 February 2026) (Judgment)

Neutral citation: [2026] KEHC 2384 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT KERICHO**

**CRIMINAL CASE E049 OF 2025**

**JK SERGON, J**

**FEBRUARY 26, 2026**

**BETWEEN**

**SAMUEL CHERUIYOT BIYEGON ...................................................... APPELLANT**

**AND**

**REPUBLIC ......................................................................................... RESPONDENT**

***(Being an Appeal from the Chief Magistrate's Court Criminal Case No.MCCR. E.2441 of 2025 by Honourable Claire Odunga, Resident Magistrate on conviction and sentenced pronounced on 22nd December, 2025)***

## JUDGMENT

1. The Appellant herein namely: Samuel Cheruiyot Biyegon pleaded guilty to a charge of threatening to kill Contrary to Section 223 (1) of the Penal Code. He was convicted and sentenced to serve 5 years imprisonment.
2. The Appellant being aggrieved, filed this appeal and put forward the following grounds of Appeal.
    i. That on 22nd December, 2025, the Applicant was convicted in Kericho Chief Magistrate's Court Criminal Case No. CMCR.2441 of 2025 for the offence of threatening to kill Contrary to Section 223 (1) of the Penal Code and sentenced to five (5) years' imprisonment, and he is currently serving that sentence at Kericho G. K. Prison.
    ii. That the Applicant has filed High Court Criminal Appeal No. HCRA.E049 of 2025 against both conviction and sentence within the prescribed time raising substantial and arguable grounds including that the plea was not unequivocal, the facts did not disclose the offence, he was not informed of his right to legal representation and the sentence is manifestly excessive.

iii. That the Applicant has filed a Notice of Motion under the Criminal Procedure Code seeking to be admitted to bail/bond pending appeal and/or stay of execution of the sentence pending the hearing and determination of his appeal.

iv. That the applicant continues to serve the said sentence pending the determination of the appeal, and it is in the interest of justice that he be admitted to bail/bond pending Appeal so that the Appeal is not rendered nugatory if it succeeds.

v. That the applicant is a first offender with no previous criminal record, has a fixed place of abode within Kericho County, has strong family and community ties, has never absconded, and is not a flight rish; he is ready and willing to comply with any bond terms including reporting and such other conditions as this Honourable Court may impose.

vi. That the applicant has secured a responsible surety, Dr. Japeth Biegon, an Advocate of the High Court of Kenya and the Africa Advocacy Coordinator at Amnesty International, who has sworn an Affidavit undertaking to stand surety ad ensure the applicant's attendance at all Court Proceedings.

vii. That the Complainant in the Trial Court matter, Ruth Nyakerario Kilel, has sworn an Affidavit clarifying that the original report concerned a domestic disagreement and confirming that she does not oppose the grant of bai/bond.

viii. That this Application for bail/bond pending Appeal is urgent and cannot await without causing irreparable prejudice to the applicant's right of appeal and liberty.

ix. That it is in the interest of justice that the Applicant's Notice of Motion for bail/bond pending appeal be heard and determined on priority basis.

3. When the appeal case up for hearing, this court directed the parties to file written submissions. At the time of writing this Judgment, the appellant was the only party who had filed his submissions. Though the Appellant put forward in his Petition of Appeal a total of 10 grounds of Appeal, those grounds can be argued in two main grounds.

4. First is that the Appellant was convicted and sentenced on a plea that was equivocal.

   Secondly, that the sentence meted out was harsh and excessive in the circumstances of this case.

5. On the first ground of appeal, it is the submission of the Appellant that the plea of guilty was not shown to be unequivocal and informed. This Court was urged to quash th conviction and set aside the sentence and direct that the Appellant to take a fresh plea before a Magistrate of competent jurisdiction other than Hon. Odunga.

6. This Court has examined the record and it is clear that the Appellant appeared before the Learned Resident Magistrate and the charge was read and explained to him.

7. The record shows that upon the charge being read and explained to him, he simply said "Ni Ukwli" which means 'It is true'. The Learned Resident Magistrate swiftly entered a plea of guilty.

8. The facts were outlined and the Appellant was called upon to confirm whether the facts read were correct and he also said "Ni Ukweli" meaning the facts "are correct". The Trial Magistrate went ahead to convict him and sentenced him to serve 5 years imprisonment.

9. The question is whether or not the plea was unequivocal? There are a number of authorities which gives the considerations to be taken into account before finding whether that a plea was equivocal.

10. An equivocal plea is a guilty plea entered with reservations or qualifications. In the Case of Adan -vs- Republic E.A. 445, the Court of appeal held inter alia that an Appellate Court must examine whether the mandatory steps in a plea taking of guilty were followed and that whether they are not, a conviction founded on such a plea is unsafe and must be set aside.

11. In this case, the Court set out the mandatory procedure as follows:-

    i. The charge and all essential ingredient must be explained to the Accused in a language he understands.

    ii. His own words in reply must be recorded, only if they amount to an admission may a plea of guilty be entered.

    iii. The Prosecution must then state the facts of the case.

    iv. The Accused must be given an opportunity to dispute, explain or add to those facts.

12. I have already given a brief synopsis of what happened before the Trial Court. It is not in dispute that the appellant was called upon at two points to take plea and he simply stated that "Ni Ukweli". I am persuaded by the Appellant's argument that what was recorded did not go far enough to demonstrate that the Appellant's plea was informed and unequivocal as contemplated.

13. It is apparent that the language actually used to explain the charge is not identified. It is not also clear whether the Appellant understood what was being read to him. It is also apparent from the record that the facts outlined by the Prosecution were brief. It is not clear whether the appellant intended to admit the charge when he said "Ni Ukweli".

14. The view I take in this appeal is that the record does not sufficiently demonstrate that the plea of guilty was taken in compliance with the mandatory procedure. I find that the conviction is unsafe and should therefore be set aside.

15. The Second ground of Appeal is to the effect that the sentence is harsh and excessive. The appellant was sentenced to five (5) years imprisonment which essence is half the statutory maximum of 10 years. I think that sentence is abit harsh and excessive for a first offender who pleaded guilty.

16. The Trial Court also failed to take note of the fact that the offence was committed under the influence of alcohol.

17. In the end, I find this appeal to be with merits. The appeal is allowed. The conviction is quashed and the sentence set aside.

18. This Court directs that the Appellant should forthwith take a fresh plea before another Magistrate of competent jurisdiction other than Hon. Claire Odunga.

**DATED, SIGNED AND DELIVERED AT KERICHO THIS 26TH DAYOF FEBRUARY, 2026.**

**J. K. SERGON**

**JUDGE**

In the Presence of:-

C/Assistant – Rutoh

No Appearance for the O.D.P.P.

Sang for the Appellant