Adon'go v Republic (Criminal Appeal 130 of 2020)
[2026] KECA 605 (KLR) (13 March 2026) (Judgment)

Neutral citation: [2026] KECA 605 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT KISUMU

CRIMINAL APPEAL 130 OF 2020

MS ASIKE-MAKHANDIA, HA OMONDI & LK KIMARU, JJA

MARCH 13, 2026

BETWEEN

EVANS OTIENO ADON'GO ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal against the judgment of the High Court of Kenya at Kisumu (Cherere, J.) delivered on 20th December, 2018, in HCCRA. No. 03 of 2018)

JUDGMENT

1. The appellant, Evans Otieno Adong'o, was arraigned before the High Court at Kisumu, where he was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the offence alleged that on the night of 27th December 2017, at around 19.00 hours, at Kinyimon Village, Okot Sub-Location, Kajulu East Location, Kisumu East Sub-County, within Kisumu County, the appellant murdered BOK.

2. The appellant denied the charge. The prosecution called eight witnesses in a bid to establish the charge. PW1, Salome Atieno Agumba, testified that on 27th December, 2017, at about 7.00 p.m., she was at home with her children BO (the deceased), FO (PW4), FA (PW7) and RO (PW2). She stated that she was seated outside the house. She sent the deceased to collect water from the house. When the deceased entered the house, someone stabbed her on the back. The deceased rushed out towards her for rescue. She testified that she then saw the appellant approach the deceased and stab him in the stomach again. The deceased tried to run after the appellant but collapsed before he could catch up with him. It was her evidence that her other son, PW2, came outside and tried to chase after the appellant, but retreated after the appellant threatened to stab him too.

3. PW2 got some bodaboda riders, including George Otieno (PW6), who rushed PW1 and the deceased to a nearby dispensary for medical attention before they were referred to Jaramogi Oginga Odinga

Teaching and Referral Hospital for further treatment. The deceased, however, succumbed to his injuries at the hospital. It was PW1's testimony that the appellant, prior to the material night, had trespassed into home on several occasions, and that on one of those occasions he had attempted to burn the bedroom where her daughter, LA (PW5) was sleeping. It was alleged that the appellant became angry after PW5 rejected his overtures to enter into a romantic relationship with him. PW2, PW4, PW5 and PW7 corroborated PW1's testimony in all material respects. It was their evidence that there was solar lighting outside the house which enabled them to identify the appellant.

4. PC Kimeli Elis (PW8) was the investigation officer. He testified that PW1, on 28th December, 2017, reported that the appellant had gone to her home the previous night, and stabbed her in the back. The deceased, who was her son, came to her rescue. The appellant stabbed him on the stomach. She informed him that they were both rushed to hospital where the deceased succumbed to his injuries. PW8 visited the scene of crime and recorded witnesses' statements. He thereafter conducted a search at the appellant's home where he recovered a knife. The appellant was arrested at Rongo and handed over to the police. PW8 produced the post mortem report which indicated that the deceased died of severe abdominal hemorrhage as result of an injury of spleen, secondary to penetrating injury by a sharp object.

5. After close of the prosecution's case, the appellant was placed on his defence. In his sworn testimony, the appellant denied the charge. He informed the Court that on the material date, he went to work, returned home at about 9.00 p.m. He did not leave the house that night. He was arrested the following day on 28th December, 2017, and escorted to the police station.

6. After full trial, the appellant was found guilty as charged. He was sentenced to serve thirty-five (35) years imprisonment. Dissatisfied by this decision, the appellant lodged this appeal.

7. In his memorandum of appeal dated 24th February, 2025, the appellant did not challenge his conviction. He however, challenged the sentence that was imposed by the trial court on the ground that the learned trial Judge failed to consider issues raised in his mitigation, and consequently imposed a sentence that was manifestly excessive in the circumstances.

8. The appeal was heard by way of written submissions. Mr. Mirembe, learned counsel appeared for the appellant. It was his submission that the trial court failed to consider the fact that the appellant was a first-time offender, and that he was a young man with a family that was dependent on him. The appellant's counsel urged that the Judiciary Sentencing Guidelines direct the courts to balance aggravating circumstances and mitigating circumstances during sentencing. He urged that the period the appellant spent in remand custody was not computed when the custodial sentence was meted out. He submitted that, in the circumstances, this Court has basis in interfering with the imposed sentence. He urged us to substitute the said sentence with a custodial sentence of twenty (20) years.

9. The appeal was opposed by the prosecution. Mr. Okango, learned Assistant Director of Public Prosecutions submitted that owing to the fact that the maximum penalty for the offence of murder is death, the appellant's custodial sentence of thirty- five (35) years could not, in the circumstances, be said to be excessive. It was his submission that the trial Judge recorded the appellant's mitigation, and thereafter called for a pre- sentencing report and a victim impact assessment report. He maintained that the appellant's mitigation was weighed against the circumstances of the case. The trial Court noted that the appellant, though a first-time offender, needed to be rehabilitated. Mr. Okango conceded that the time the appellant spent in remand custody ought to be computed in his sentence.

10. We have carefully considered the record of appeal, the submissions by both parties, and the law. The principles that guide interference with sentence by the appellate Court were set out in Gacheru v

Republic (Criminal Appeal 188 of 2000) [2002] KECA 94 (KLR) (20 February 2002) (Judgment) as follows:

> " 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 material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist."

11. There is no doubt that the offence herein was grave. The appellant stabbed the deceased in the stomach, causing him to sustain serious injuries from which the deceased succumbed.

    The loss of life is irreversible. The sentence imposed must reflect the seriousness of the offence. On the other hand, the record shows that the appellant was a first offender. He was remorseful and asked the Court for leniency. He further stated that he had a wife and a young child who were all dependent on him. The appellant's mitigation, though noted, does not appear to have been accorded substantial weight.

12. Sentencing serves several objectives, including retribution, deterrence, rehabilitation, and community protection. In balancing these objectives, courts are enjoined to individualize sentences to fit not only the crime, but also the offender. While a custodial sentence was inevitable in the circumstances of this case, we are persuaded that a term of thirty-five (35) years' imprisonment, in light of the fact that the appellant is a first offender, and the totality of the circumstances of the case, was on the harsher side and thus manifestly excessive.

13. It is our considered view that a sentence of twenty-five (25) years' imprisonment would meet the ends of justice. The sentence sufficiently reflects the seriousness of the offence, while at the same time taking into account the mitigating factors and the appellant's prospects for rehabilitation.

    Considering the provisions of Section 333(2) of the Criminal Procedure Code, the sentence shall run from the date the appellant was arrested, which for avoidance of doubt, is 28th December, 2017.

14. The appeal to that extent succeeds.

DATED AND DELIVERED AT KISUMU THIS 13TH DAY OF MARCH,2026.

ASIKE-MAKHANDIA

.....

JUDGE APPEAL

H.A. OMONDI

.....

JUDGE OF APPEAL

L. KIMARU

.....

JUDGE OF APPEAL

I certify that this is a true copy of original.

DEPUTY REGISTRAR