



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDAMA RAVINE
(SUB-REGISTRY)

CRIMINAL APPEAL NO. E007 OF 2025

JIM KIGENAPPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

(This is an appeal arising from the judgment/conviction and sentence of Hon. Richard Koech in Criminal Case No. 726 of 202 delivered on 19th March 2025)

1. The Appellant **JIM KIGEN** was charged with the offence of attempted murder contrary to section 220 of the penal code. Particulars are that on 16th day of May 2025 at Kapkoros village, Tuiyotich Location in Koibatek subcounty within Baringo county, with others not before court, the accused willfully and unlawfully attempted to cause the death of Jane Kigen

Kipkoech by assaulting and pouring her petrol with intent to set her ablaze.

2. Count II is the offence of malicious damage to property contrary to section 339(1) of the penal code. Particulars are that on the same day same location, the accused willfully and unlawfully damaged Redmi A3x mobile phone valued at KShs 10,00 the property of Jane Kigen.
3. The accused denied the charge on 28th May 2025 but on 18th August 2025, the accused informed the court that he wished to change plea. The charge was read to him and he admitted the charge.
4. Circumstances of the charge were that the complainant who is the appellant's mother had gone to the Assistant County Commissioner's office for a meeting over subdivision of family land. Accused did not attend the meeting and thereafter the complainant took minutes of the meeting to his house and handed over to his children. The appellant later went to complainant's house while shouting that he would not accept to share land with his sisters. He went back to his house for a panga and petrol then grabbed the complainant and fell her down. He took her mobile phone, smashed it on the ground. Appellant then poured the liquid in the jerrycan on the complainant. The complainant hit the jerrycan and it poured on appellant. Appellant looked for a matchstick but realizing that

the liquid had poured on him, he opened the door and demanded for title deed. The completed told appellant that his father had not transferred land to her. Appellant the pushed the complainant out of the house telling to go towards Ken's house so that Ken could witness appellant killing her. Ken then came out of his house and held the appellant and asked the complainant to leave. Accused then asked his mother the complainant herein to go to her parent's home at Saos as he did not want to see her again. On her way out, the complainant met OCS Eldam Ravine and he dropped his panga and disappeared into maize plantation.

5. The appellant admitted the facts as read to him. He was convicted ad prosecution counsel indicated that he was a first offender. The trial magistrate called for presentence report which he found not favourable and considered the act of appellant pouring petrol on his mother with intention of burning her very serious and imposed 7 years imprisonment for count 1 and 3 months imprisonment for count II.
6. Being aggrieved by the sentence, the appellant filed this appeal on the following grounds;
 - a. That the trial court failed to consider other forms of sentencing like custodial sentence
 - b. That the court failed to comply with section 210,211, and 213 of the criminal procedure code

- c. That the trial court failed to consider that admission of the charge by appellant ought to have probative value in sentencing and the court ought to have imposed non-custodial sentence; and by trial court imposing maximum sentence negated the entitlement and essence of mitigation
 - d. That the trial court failed to allow appellant opportunity to be represented by an Advocate
 - e. That the court failed to take cognizance of the fact that he was held upon arrest from 24th may 2025 to 27th may 2025 therefore out of 14 hours required by law
 - f. That the trial court did not accord him an opportunity to mitigate and lodge defence and that the charge was not proved to the required standard.
7. The matter proceeded by way of written submissions. In the submissions the appellant restated his grounds of appeal. He cited the case of Chelimo v Republic [2023] KEHC25007 in support of his argument that he was held for more than 24 hours upon arrest before being arraigned in court.
8. On right to representation, the appellant referred to Article 50 of the constitution and the case of Chengo vs Republic & 2 others (petition no.5 of 2015).
9. On plea taking, the appellant submitted that when he decided to change plea, he should have been cautioned on the

consequences of admitting the charge. He cited the case of Wakianda v republic and Francis Macharia Nzeki v Republic.

10. The appellant further challenged the charge indicating that there was duplicity and also argued that the exact words used by the appellant in response to the charge were not recorded by the trial magistrate.
11. He further submitted that the ingredients of the charge were not proved, that no match box was produced to ignite petrol and cited the case of Alexander Kile Kasuki v Republic [2010] KECA 420(KLR).
12. He further submitted that an over act was not established and cited the case of Cheruiyot v Republic (1976-1985).
13. The appellant further submitted that he was not supplied with presentence report despite the fact that it was not favorable to him thus violating his right to fair hearing.
14. In response the prosecution counsel submitted that in respect to legal representation, the appellant did not inform the court that he is indigent and in need of stat sponsored Advocate. Further the fact that he was represented by Mr. Kitole Advocate on 12th August 2025 is clear indication that he was aware of his right to legal representation and the fact that

he sought counsel when lodging this appeal is clear indication that he has capacity to engage a lawyer.

15. Further that on 18th August 2025, the appellant started by stating that he was ready to proceed before informing the court that he wished to change plea and that he had been supplied with witness statements. That it is not true that substantive injustice was occasioned to the appellant as he actively participated in the trial. The prosecution counsel cited the case of *Kimanzi Mwanzia v Republic* [2021] eKLR.
16. On the charge, prosecution counsel submitted that by pouring petrol on the complainant, it showed the appellant had moved from preparing to commit offence of murder to attempt to murder and at the point he realized that petrol had poured on him and he would get burnt if he lit match stick is when he opened the door.
17. On sentence, the prosecution counsel submitted that section 2020 of the penal code under which appellant was charged provide for life imprisonment but he was sentenced to 7 years imprisonment. She urged this court not to interfere with the sentence as the pouring of petrol on the complainant was very serious. She urged this court to dismiss appeal on both conviction and sentence.

Analysis and Determination

18. This appeal arises from a conviction entered on the Appellant's own plea of guilty. The scope of appellate intervention in such circumstances is limited. Save for matters relating to the legality or extent of sentence, or where the plea is shown to be equivocal or not properly taken, an appeal against conviction following a plea of guilty will not ordinarily lie.
19. The record shows that the Appellant initially pleaded not guilty on 28th May 2025. On 18th August 2025, nearly three months later, he informed the trial court that he wished to change his plea. The charge was read to him afresh in a language he understood and he admitted the charge. This was not a hurried or impulsive plea. The Appellant had sufficient time to reflect on the charge and the consequences of changing his plea.
20. The facts supporting the charge were thereafter read out in detail, setting out the overt acts constituting the offence of attempted murder, including arming himself with petrol and a panga, assaulting the complainant, pouring petrol on her with intent to set her ablaze, and searching for a matchstick. Upon being asked to respond to the facts, the Appellant unequivocally admitted them. The trial court therefore complied with the settled principles on plea taking.

21. The Appellant's argument that he ought to have been cautioned on the consequences of pleading guilty has no basis in law. What the law requires is that the charge and facts be clearly explained and that the accused admits them without qualification. That threshold was met in this case.
22. The contention that the ingredients of the offence of attempted murder were not proved is similarly misplaced. By his plea of guilty, the Appellant admitted all the elements of the offence. In any event, the facts disclosed an overt act which went beyond mere preparation. The act of pouring petrol on the complainant and searching for a matchstick demonstrated a clear intention to cause death. The offence was only interrupted by the fact that petrol had spilled on him and there was likelihood that he could also get burned.
23. The argument on duplicity of the charge and failure to record the exact words used by the Appellant cannot stand in the face of a clear plea of guilty and an unqualified admission of the facts. No prejudice was demonstrated.
24. On the complaint that the Appellant was not afforded an opportunity to mitigate, the record shows that after conviction, the trial court was informed that the Appellant was a first offender and the court asked the appellant to mitigate which he did. The court further called for a pre-sentence report, which

it considered before passing sentence. The allegation that the Appellant was denied mitigation is therefore not supported by the record.

25. The complaint on not being supplied with pre-sentence report is equally without merit. A pre-sentence report is an aid to the court in sentencing and not evidence to be contested. The Appellant did not raise any objection at the trial court, and no prejudice has been demonstrated.
26. As regards the alleged violation of the right to be produced in court within 24 hours, that issue, even if established, would not vitiate a plea of guilty that was freely and voluntarily entered. Moreover, such a complaint ought to be pursued separately and does not affect the validity of the conviction or sentence in this appeal.
27. On the right to legal representation, the record does not show that the Appellant informed the trial court that he was indigent or requested state-funded counsel. The Appellant was aware of his right to legal representation, having previously been represented by counsel during the proceedings and later engaging counsel to file this appeal. No violation of Article 50 of the Constitution was demonstrated.

28. Turning to sentence, the offence of attempted murder under section 220 of the Penal Code attracts a maximum sentence of life imprisonment. The Appellant was sentenced to seven (7) years' imprisonment. The sentence was lawful, well within the statutory limits, and took into account the seriousness of the offence, the pre-sentence report which indicated that the appellant's family members were still in fear that appellant may retaliate and the fact that the victim was the Appellant's own mother.

29. The act of pouring petrol on another person with intent to set them ablaze is an extremely grave offence. In the circumstances, the sentence imposed cannot be described as harsh or excessive. If anything, it was lenient.

30. An appellate court will not interfere with sentence unless it is shown that the trial court acted on wrong principles, overlooked material factors, or imposed a sentence that is manifestly excessive. None of these grounds has been demonstrated. From the foregoing, I am satisfied that the plea of guilty was unequivocal, the conviction was proper, and the sentence was lawful and justified. I however note the period served in remand was not taken into consideration as required by section 333(2) of the criminal procedure Code.

31. **FINAL ORDERS:-**

- a) The appeal against both conviction and sentence is therefore without merit and is dismissed in its entirety.
- b) Period served in remand to be computed in the sentence imposed by the trial court.

Dated and signed at **Nairobi** this 11th day of March 2026.



.....
R NGETICH
JUDGE

Dated, Countersigned and delivered at **Eldoret** this 12th day of March 2026.

.....
J. R. WANANDA
JUDGE

In the presence of:

Court Assistant – Brian Kamotho

Ms. Omari for DPP

No appearance for Advocate for Appellant.

Appellant present virtually from Nakuru Main Prison.