

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL APPEAL NO. E087... OF 2025

JAVAN OMUTSOTSI OWINO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Arising from Mumias SPM Criminal Case No. E208 of 2025)

JUDGMENT

1. The appellant, Javan Omutsotsi Owino, was arraigned before the Senior Principal Magistrate’s Court at Mumias facing three serious criminal charges, namely:
 - i. Count I: Robbery with violence contrary to section 296(2) of the Penal Code
 - ii. Count II: Gang rape contrary to section 10 of the Sexual Offences Act No. 3 of 2006
 - iii. Count III: Committing an indecent act with an adult contrary to section 11A of the Sexual Offences Act
2. The record shows that upon the charges being read and explained to him, the appellant pleaded guilty to all counts. The prosecution then outlined the facts, which the appellant admitted as correct without qualification.
3. Upon conviction on his own plea of guilty, the trial court sentenced him as follows:
 - i. 20 years’ imprisonment for robbery with violence

- ii. 20 years' imprisonment for gang rape
 - iii. 5 years' imprisonment for committing an indecent act
4. The sentences were ordered to run concurrently.
5. Being dissatisfied, the appellant lodged this appeal challenging sentence, though his grounds also indirectly question the validity of the plea. He contends that:
- a) He did not understand the charge
 - b) He was not warned of the consequences of pleading guilty
 - c) He was misled by police officers
 - d) He was not informed of his right to plead not guilty
 - e) The sentence imposed is harsh and excessive

Duty of the First Appellate Court

6. This court, sitting as a first appellate court, is under a duty to reconsider and re-evaluate the evidence and proceedings afresh, and draw its own independent conclusions.
7. This principle was authoritatively stated by the former East African Court of Appeal **in Okeno v Republic [1972] EA 32**, where the Court held that ***a first appellate court must subject the entire evidence to fresh and exhaustive scrutiny while bearing in mind that it did not have the opportunity to see or hear witnesses.***

8. Although the present case arises from a plea of guilty, the same duty extends to examining the propriety of the plea and the legality and propriety of the sentence.

Issues for Determination

9. From the record and grounds of appeal, the following issues arise:
 - a) Whether the plea of guilty was unequivocal and properly taken
 - b) Whether the sentence imposed was harsh, excessive, or unlawful

a) Whether the Plea Was Unequivocal and properly taken

10. The law governing plea taking in Kenya is well settled. The leading authority is **Adan v Republic [1973] EA 445**, a decision of the East African Court of Appeal, which laid down the proper procedure for recording a plea of guilty. The Court held that:

‘The charge and all essential ingredients must be explained to the accused in a language he understands...The accused’s own words must be recorded...prosecution must then state the facts...The accused must be given an opportunity to dispute or explain the facts...A conviction should only follow if the accused admits the facts without qualification.’

11. The importance of these steps is to ensure that a plea of guilty is clear, voluntary, and informed.

12. **In Kariuki v Republic [1984] KLR 809**, a decision of the Court of Appeal emphasized that failure to follow the Adan procedure renders a plea equivocal and unsafe.
13. Similarly, in **Paul Matungu v Republic [2020] eKLR**, a decision of the High Court of Kenya, ***the Court stressed that the trial court must ensure the accused fully understands the nature of the charge and the consequences of pleading guilty.***
14. A careful perusal of the lower court record reveals that the charges were read and explained to the appellant and he responded by pleading guilty. The facts were also read out in detail and the appellant expressly admitted the facts as correct. No qualification, protest, or ambiguity was recorded
15. There is no indication that the appellant expressed confusion, the language used was not understood and that the plea was forced or induced. The appellant's claim that he was misled by police was not raised at the trial stage and is unsupported by any evidence.
16. In **Alexander Lukoye Malika v Republic [2015] eKLR**, the Court of Appeal of Kenya held that ***'an appellate court will only interfere with a plea of guilty where it is shown to be equivocal or the procedure in Adan v Republic was not followed...a mere allegation of misunderstanding, without more, is insufficient.***
17. This court is satisfied that the plea of guilty was properly taken, unequivocal and in full compliance with the law.

b) Whether the sentence imposed was harsh, excessive, or unlawful

18. The law on when an appellate court may interfere with sentence is well established In **Wanjema v Republic [1971] EA 493**, a decision of the East African Court of Appeal, the Court held that:

' An appellate court will not interfere with sentence unless the sentence is illegal, the trial court overlooked material factors, the court considered irrelevant factors and he sentence is manifestly excessive.'

Sentence for robbery with violence contrary to section 296(2) of the penal code.

19. Section 296(2) of the Penal Code provides for the offence of robbery with violence, which historically attracted a mandatory death sentence. However, the legal position evolved **following Francis Karioko Muruatetu & Another v Republic [2017] eKLR**, where the Court declared mandatory death sentences unconstitutional to the extent that they deprived courts of sentencing discretion.

20. In the present case, the trial court imposed 20 years' imprisonment, expressly noting the appellant's plea of guilty. This

sentence is lawful, lenient considering the gravity of the offence and below the maximum penalty.

Sentence for gang rape contrary to section 10 of the Sexual Offences Act.

21. Section 10 of the Sexual Offences Act prescribes a minimum sentence of 15 years, which may be enhanced to life imprisonment for the offence of gang rape

22. In **Dismas Wafula Kilwake v Republic [2018] eKLR**, the Court of Appeal of Kenya held that:

‘Mandatory minimum sentences should not completely fetter judicial discretion...Courts must consider proportionality and circumstances of each case.’

23. Applying that reasoning, the sentence of 20 years’ imprisonment is above the statutory minimum, justified given the seriousness of the offence and not excessive in the circumstances. Gang rape is particularly grave offence involving violation of dignity and bodily integrity.

Sentence for committing an Indecent Act with an adult contrary to section 11(A) of the Sexual Offences Act.

24. The sentence of 5 years' imprisonment for committing an indecent act is within the statutory framework and raises no legal issue.
25. The trial court ordered the sentences to run concurrently, which is consistent with sentencing principles where offences arise from the same transaction. This worked to the benefit of the appellant, effectively reducing the total period of imprisonment.
26. The record shows that the trial court considered the appellant's plea of guilty and the nature and seriousness of the offences. The court expressly indicated that it was exercising leniency.
27. Given the gravity of robbery with violence and the Sexual offences involving multiple offenders, the sentences imposed cannot be said to be harsh.

Conclusion

28. Upon a comprehensive re-evaluation of the record and applicable law, this court finds that:
 - i. The plea of guilty was unequivocal and properly recorded
 - ii. The conviction was safe and lawful
 - iii. The sentences imposed were legal, proportionate, and not excessive
 - iv. The trial court exercised its discretion judiciously

Orders

29. Accordingly, the appeal is hereby dismissed in its entirety and the conviction is upheld.
30. Right of Appeal 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30TH DAY OF APRIL, 2026.

S.N MBUNGI

JUDGE

In the presence of:-

CA: Angog'a/Velma

Accused present at Kibos Prison online.

Mr. Kiu for the ODPP present.