

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BOMET
CRIMINAL APPEAL NO. E013 OF 2025

DUNCAN KIPNGENO KOECH

APPELLANT

VERSUS

REPUBLIC

.....RESPONDENT

*(From the Conviction and Sentence in Criminal Case
Number E438 of 2025 by Hon. Kimtai B.M in the Senior
Principal Magistrate's Court at Sotik)*

J U D G M E N T

1. The Appellant was charged for the offence of grievous harm contrary to **section 234 of the Penal Code**. The particulars of the offence were that on 10th May 2025 at 1600 hours at Saruchat Village, Tembua Location in Sotik Sub-County within Bomet County, he did grievous harm to Richard Korir by use of a blunt object which he hit him on his mouth thus forcefully removing three teeth, two on the upper jaw (incisors) and one on the lower jaw (incisor).
2. The Appellant was convicted on his own plea of guilty and was sentenced to serve 10 Years Imprisonment.
3. Being dissatisfied with the conviction and sentence, the Appellant appealed against his sentence.
4. This being the first appellate court, I have a duty to re-evaluate the evidence on record.

The Appellant's submissions.

5. Through his written submissions dated 17th November 2025, the Appellant submitted that the conviction was based on an equivocal plea. That the trial court did not warn him of the seriousness of the offence or the consequences of the guilty plea. The Appellant further submitted that he did not voluntarily or freely plead guilty. That he was confused and intoxicated and the plea was not valid. He relied on **Paul Matungu vs R (2006) eKLR** and **Samuel Waiythaka Gachara vs R (2015) eKLR**.

6. It was the Appellant's submission that the facts of the case did not demonstrate malice, intention or unlawfulness. That the trial court should not accept a guilty plea where the facts of the case as read did not disclose the offence. He relied on **Atito v R (1975) EA 278**. It was the Appellant's further submission that sentences ought to be proportionate and the

trial court should consider an Accused's mitigation. That the 10-year sentence was harsh.

The Respondent's submissions

7. Through their written submissions dated 24th November 2025, the Respondent submitted that the Appellant's plea was unequivocal and that he had no defence. That the trial court did not err when it convicted and sentenced him. The Respondent further submitted by dint of section 348 of the Criminal Procedure Code, the Appellant was only allowed to question the legality of his sentence. That the penalty for the offence of grievous harm was a maximum sentence of life imprisonment and that the 10-year sentence was not excessive.

8. It was the Respondent's submission that the complainant had forgiven the Appellant and urged this court to review the sentence to promote family harmony and encourage reconciliation.

9. Before I begin my analysis, I observe that the Appellant was convicted on their own plea of guilty. **Section 348 of the Criminal Procedure Code** provides: -

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

10. It has however been held that the above section of the law was not an absolute bar to appeals such as the present one. The Court of Appeal in **Wandete David Munyoki v Republic [2015] KECA 421 (KLR)** held: -

“It has long been settled that Section 348 of the Criminal Procedure Code which provides that no appeal is allowed in a conviction arising from a plea of guilty, except to the extent and legality of the sentence, is not an absolute bar to

challenging such a conviction on any other ground. Indeed, in Ndede v R [1991] KLR 567, this Court held that the court is not bound to accept the accused person's admission of the truth of the charge and conviction as there may be an unusual circumstance such as injury to the accused person or the accused person may be confused or there has been inordinate delay in bringing him to court from the date of arrest. The list of circumstances and examples that may lead the first appellate court to consider the appeal on merit even when the conviction was on the accused person's own plea of guilty, are not closed."

11. Similarly, in **John Muendo Musau v Republic [2013] KECA 266 (KLR)**, the Court of Appeal held: -

“There is a long line of authority to the effect that the bar to an appeal against a conviction based on a guilty plea is not absolute.....”

12. From the above authorities, this court is permitted to consider the grounds of Appeal raised by the Appellant despite the provisions of **section 348 of the Criminal Procedure Code**. It is only after such consideration and analysis that this court can determine whether the Appellant’s convictions was safe or not.

13. I have gone through and given due consideration to the trial court’s proceedings, the undated Petition of Appeal, the Appellant’s written submissions dated 17th November 2025 and the Respondent’s written submissions dated 24th November 2025. The two issues that arise for my determination are: -

i) Whether the plea was unequivocal

ii) Whether the sentence was harsh and excessive.

i) Whether the plea was unequivocal.

14. I have noted that the Appellant was unrepresented during the trial and that one of his grounds of Appeal was that the plea he entered was equivocal. To ensure that the Appellant was accorded a fair trial in accordance to **Article 50 of the Constitution of Kenya**, I shall relook the plea process in the trial court.

15. The process of plea taking is provided under Section **207(1) and (2) of the Criminal Procedure Code** which states: -

(1) The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he pleads not guilty, guilty or guilty subject to a plea agreement;

(2) If the accused person admits the truth of the charge otherwise than by a plea agreement his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary:

Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded.

16. In the case of **Omollo vs Republic (Criminal Appeal E031 of 2023) [2024] KEHC 2664 (KLR) (14 March 2024) (Judgment)**, Mrima J. held: -

“The process of plea taking is one that must be guarded jealously with strict adherence to procedure lest an accused person loses their liberty summarily.

In Criminal Appeal 365 of 2011, John Muendo Musau -vs- Republic [2013] eKLR, the Court of Appeal, in reference to the decision in Adan -vs- Republic discussed the process of plea taking as follows;

(5)On this argument, we wish to state that we have outlined the procedure followed before the trial court at the time of taking the plea. The legal principles to be applied in plea taking in all criminal cases were well enunciated in the locus classicus case of Adan vs Republic [1973] EA 445 where the Court held: -

(i)The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language he understands.

(ii)The accused's own words should be recorded and if they are an admission, a plea of guilty should be recorded.

(iii)The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.

(iv)If the Accused does not agree with the facts or raises any question of his guilt his reply must be recorded and change of plea entered.

(v)If there is no change of plea a conviction should be recorded and a statement of facts relevant to sentence together with the accused's reply should be recorded."

17. I have gone through the trial court proceedings and I have noted that the Appellant took plea on 13th May 2025 when

the substance of the charge was read and explained to him in a language he understood and he replied “it is true”, a response which was recorded by the trial court and a plea of guilty entered.

18. The facts were read out to him and the Appellant stated that the facts were true. He was consequently convicted on his own plea of guilty.

19. Having gone through the trial record, I have noted that the trial court adopted the proper procedure in recording the plea. The Appellant understood the charges and the facts and admitted them. He had every opportunity to inform the court that the particulars of the charge or facts were not true but he did not.

20. It is salient to note that a guilty plea can be overturned at the mitigation stage if the Accused at mitigation submits and contradicts what he had pleaded guilty to or admitted to. In

the event of such an occurrence, the trial court should change the plea to a not guilty plea. The Court of Appeal in the case of **John Muendo Musau (*supra*)** observed: -

“We want to add here that if the accused wishes to change his plea or in mitigation says anything that negates any of the ingredients of the offence he has already admitted and been convicted for, the court must enter a plea of not guilty. That is to say that, an accused person can change his plea at any time before sentence.”

21.I have considered the Appellant’s mitigation in the trial court. His submissions did not negate any facts of the case.

22.Flowing from the above, it is my finding that the Appellant’s plea was unambiguous and unequivocal and the Appellant was properly convicted of the offence of grievous harm.

ii) Whether the sentence was harsh and excessive

23.The Appellant was charged and convicted of the offence of grievous harm. **Section 234 of the Penal Code** provides that: -

Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.

24.The Appellant was sentenced to 10 years for an offence which carried a sentence of life imprisonment.

25.I have considered the circumstances of the case and I have noted that the Appellant was the complainant's son. The Appellant attacked his father without provocation and caused his father serious injuries. I have also noted the father's (complainant's) Affidavit dated 5th November 2025 where he stated that he had forgiven the Appellant and asked this court to review the Appellant's sentence. Having

considered the above, it is my finding that the Appellant shall benefit from the mercy of this Court. I also factor in the fact that the Appellant pleaded guilty to the charge and appeared remorseful.

26. In the end, I set aside the **10-year prison term** and substitute it with a sentence of **5 Years Imprisonment**. The Sentence to run from the date of Plea Taking on **13th May, 2025**.

Judgement delivered, dated and signed this 12th day of May, 2026

.....
HON. JULIUS K. NG'ARNG'AR
JUDGE

Judgement delivered in the presence of;
Siele/Susan - Court Assistants

Mr. Magoma for the State

Appellant - present

ORIGINAL