Ogweno v Republic (Criminal Appeal E020 of 2021)
[2025] KECA 642 (KLR) (4 April 2025) (Judgment)

Neutral citation: [2025] KECA 642 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT KISUMU

CRIMINAL APPEAL E020 OF 2021

MSA MAKHANDIA, HA OMONDI & LK KIMARU, JJA

APRIL 4, 2025

BETWEEN

COLLINS OLUOCH OGWENO ..... APPELLANT

AND

REPUBLIC ..... RESPONDENT

(Being an appeal from the Judgment of the High Court of Kenya at Siaya (R.E. Aburili, J) dated 4th May, 2020 in HC CR. Case No. 32 of 2017)

JUDGMENT

1. The Appellant, Collins Oluoch Ogweno, was charged before the High Court, with murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence were that, on 9th December, 2017, at Bondo Town in Siaya County, the appellant murdered Vallary Amondi Odhiambo (the deceased). When the appellant was arraigned before the trial court, he pleaded not guilty to the charge. After full trial, the appellant was convicted as charged and sentenced to serve life in prison.

2. The appellant was aggrieved by the sentence imposed on him.

   He has appealed against the said sentence to this Court. In his memorandum of appeal, the appellant stated that the sentence imposed on him was harsh, excessive and indeterminate. In his submissions before Court, the appellant stated that at the time of the commission of the offence, he was 25 years old and was a first offender. He is remorseful and had reformed in the period that he has been in prison. He had been rehabilitated and regrets committing the crime. He urged the Court to apply the proportionality principle in sentencing him i.e. balance the need to punish offenders and promote the goal of rehabilitation and reinstatement of the offender back to the Society.

3. The appellant urged the Court to take into account his previous history of good behavior and reach the determination that he deserves a lesser sentence than the one that was imposed by the trial court. The appellant attached a recommendation letter from prison which shows that in the period of

his incarceration, he had enrolled in several rehabilitative courses that has seen him awarded several certificates including diplomas and certificates in Biblical Studies, a certificate in Psychological First Aid and a certificate in Youth Safety Awareness Initiative. In essence, the appellant is saying that he has fulfilled all the parameters indicative that he is reformed and is ready to return back to society.

4. The respondent is opposed to the appeal. The respondent urged us to consider the circumstances which the crime was committed. The respondent was of the view that there were aggravating circumstances that militates against this Court interfering with the sentence imposed by the trial court. The said aggravating circumstances were; the nature of injuries inflicted on the victim, the fact that the death of the deceased was a case of gender based violence and femicide and the fact that a human life was lost as a result of the appellant's heinous crime.

5. The respondent is of the view that the custodial sentence imposed by the trial court was neither harsh nor excessive as it fitted the crime. It should not therefore be interfered with or upset by this Court on appeal. The respondent submitted that the trial court had correctly applied the sentencing principles enunciated by the Supreme Court in Francis Karioko Muruatetu & another v. Republic; Katiba Institute & 5 others (Amicus curie) [2021] eKLR (Muruatetu 2).

6. During the plenary hearing of the appeal, Mr. Ariho learned counsel for the appellant and Mr. Okango, learned counsel for the respondent respectively relied wholly on their written submissions filed. The said written submissions have been summarized above. This being a first appeal, it is our duty to re-evaluate and reconsider the entire evidence adduced before the trial court, in the light of the grounds of appeal and the submissions made in this appeal, and reach our own independent determination. In doing so, we are required to bear in mind that we did not see nor hear the witnesses as they testified and therefore give due allowance in that regards. (see Okeno V. Republic [1972] EA 32).

7. There is only one issue for our determination on this appeal, was the custodial sentence meted on the appellant appropriate in the circumstances? Was it proportional to the offence committed? The starting point is our mandate in considering an appeal against sentence. This Court in Benard Kimani Gacheru v. Republic [2020] KECA94(KLR) held thus:

> "It is now settled that, following several authorities by this Court or by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, the sentence must depend on the facts and circumstances of each case. On appeal, the appellate court will not easily interfere with the sentence unless that sentence is manifestly excessive in the circumstances of the case or that the trial court overlooked some material factor, took into account some wrong material, or acted on the wrong principle. Even if 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 exists."

8. In the present appeal, the appellant is not challenging his conviction. The appellant, in the circumstances, conceded that his conviction was proper.

9. The prosecution established to the required standard of proof beyond any reasonable doubt, that the appellant lured the deceased, who was his girlfriend and a student at Jaramogi Oginga Odinga University of Science and Technology at Bondo, to a hotel at Bondo town and then, at night, viciously attacked and cut her severally on her head and upper torso with a panga causing her to sustained fatal injuries. The reason for this attack was not evident from the evidence that was adduced before the trial court. As a result of this heinous crime, a family lost a daughter who was about to graduate from

university. The appellant pleads for this Court to exercise leniency on him and reduce the custodial sentence that was imposed on him.

10. We have considered the submissions made by both the appellant and the respondent. It was clear to us that the offence committed by the appellant deserves a custodial sentence. This Court notes that the appellant has made an effort to expiate the wrong that he committed to the society by undertaking several reformative courses while in prison. However, the fact that a human life was lost in such tragic circumstances, calls for an appropriate sentence to address the seriousness of the offence.

11. We are persuaded that the custodial sentence of life imprisonment imposed by the trial court was inappropriate in the circumstances following the guidelines issued by the Supreme Court's in the Francis Karioko Muruatetu case (supra). It was excessive in the circumstances. The appellant's appeal partially succeeds in that regard. We set aside the said sentence and substitute it with a sentence of twenty-five (25) years imprisonment. This sentence shall take effect from the date of conviction by the trial court. We note that the appellant was out on bond during the trial at the High Court.

DATED AND DELIVERED AT KISUMU THIS 4TH DAY OF APRIL, 2025.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

H.A. OMONDI

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

I certify that this is a true copy of original.

DEPUTY REGISTRAR