Mutai v Republic (Criminal Appeal E009 of 2021) [2025] KECA 1357 (KLR) (25 July 2025) (Judgment)

Neutral citation: [2025] KECA 1357 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAKURU

CRIMINAL APPEAL E009 OF 2021

JM MATIVO, PM GACHOKA & WK KORIR, JJA

JULY 25, 2025

BETWEEN

VINCENT KIPNGENO MUTAI .... APPELLANT

AND

REPUBLIC .... RESPONDENT

(An appeal against the judgment of the High Court at Kericho (A. Ongeri, J.) dated 9th July 2021 in HCCRC No. 27 of 2018)

JUDGMENT

1. The appellant, Vincent Kipngeno Mutai, is, through this appeal, challenging the sentence only. Before the High Court, the appellant faced a charge of murder contrary to section 203 as read with section 204 of the *Penal Code*. However, he entered into a plea bargain agreement and was convicted of the lesser charge of manslaughter contrary to section 202 as read with section 205 of the *Penal Code*. He was thereafter sentenced to 50 years' imprisonment. In his memorandum of appeal, the appellant contends that the sentence is manifestly harsh and excessive and that the trial court did not consider his mitigation.

2. The brief facts of the offence were that on 10th October 2018 at around 4.00 p.m., the appellant slightly drunk at the time, went tothe house of his father (Bethwel Kimutai Tanui – "the deceased") and demanded money from him. The appellant had learned that his father had collected rent from the premises he (the appellant) had constructed with his mother. When the deceased refused to hand over the money, the appellant got annoyed, picked up a walking stick, and hit him on the head. Fearing for his life, the deceased told the appellant to go and get 5,000 shillings from a businessman at Chepnyogaa Centre. When the appellant went and asked the businessman for the money, the businessman denied owing the deceased any money. This infuriated the appellant, who went back home and ransacked the house but found no money. It was then that he picked up the walking stick and assaulted the deceased again. When neighbours heard the commotion, they went to the deceased's rescue, but the appellant

threatened them, telling them not to interfere with his family's affairs. It is only after the deceased gave the appellant an envelope containing a title deed that the appellant stormed out of the house with some of his belongings. Later, at about 6.00 p.m., the deceased was found dead on his bed with multiple visible injuries. The appellant, upon learning of the demise of his father surrendered himself at Sosiot Police Station.

3. When this appeal came up for hearing, the appellant was represented by learned counsel Ms. Mwango, while Senior Assistant Director of Public Prosecutions, Mr. Omutelema, appeared for the respondent. Counsel for the parties opted to rely on their written submissions, which were already filed.

4. In the submissions dated 17th April 2025, Ms. Mwango argued that this Court can interfere with a sentence that is excessive and unreasonable. Counsel referred to the holding in *George Onyango Kisera & Another vs. Republic* [2019] eKLR, to buttress this view and to urge that 50 years imprisonment was excessive and unreasonable in the circumstances of this case, and the Court should interfere with the sentence. Counsel additionally contended that the trial court did not mention the mitigating factors in the sentencing proceedings, despite the appellant's mitigation. Ms. Mwango referred the Court to the sentencing guidelines set by the Supreme Court in *Francis Karioko Muruatetu & Another vs. Republic* [2017] KESC 2 (KLR). Counsel urged us to consider that the appellant is a young, remorseful first offender who has been in custody since 2018. Further, that he has acquired education while in custody and is committed to being a change agent in society. Counsel maintained that it was erroneous for the trial court to concentrate on the aggravating circumstances while failing to consider the mitigating factors. Ultimately, Ms. Mwango urged that the sentence be set aside and substituted with a shorter prison term or a non-custodial sentence, given the appellant's expressed remorse, readiness for rehabilitation, and his desire to be reintegrated into society.

5. On his part, Mr. Omutelema, through the submissions dated 2nd April 2025, indicated the respondent's concession to the appeal against sentence, arguing that 50 years imprisonment for manslaughter was harsh and excessive. However, counsel opposed the imposition of a non-custodial sentence and urged us to give a reasonably severe custodial sentence. In support of the submissions, Mr. Omutelema relied on the case of *Nelson vs. Republic* [1970] EA. 599 to illustrate the circumstances under which an appellate court can interfere with a sentence and section 137L of the *Criminal Procedure Code* to point out that even though a sentence arising from a plea bargain should be final, the same can be interfered with if it is found to be illegal.

6. We have addressed our minds to the record, the submissions, and the authorities cited by counsel for the parties. As an appellate Court, we are expected to defer to the sentencing discretion of the trial court and only interfere where the sentence is manifestly excessive or where the trial court overlooked some material factor, or considered some wrong material, or acted on a wrong principle. These principles were restated in *Bernard Kimani Gacheru vs. Republic* [2002] eKLR 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."

7. We have considered the appellant's submission that his mitigation and the period served in custody prior to the sentencing were not considered. We find that this submission is a misrepresentation of the record. The learned Judge clearly indicated that she had considered the appellant's mitigation as presented by his then counsel on record. The learned Judge also expressly ordered that the appellant's sentence was to run from 17th October 2018, when he was first arraigned in court. We therefore find that these arguments do support the appellant's assail against the sentence and they must fail.

8. The ground that calls for closer interrogation is the one conceded to by the respondent; that the sentence is harsh and excessive. In *Mwangi vs. Republic* [2024] KECA 928 (KLR), this Court, while discussing the place of a plea of guilty or a conviction arising from a plea bargain agreement, pointed out that:

> "It must be appreciated that an accused person who pleads guilty saves the time that would have been used to conduct a trial. A plea of guilty also guarantees the prosecution a conviction which is not a certainty where a trial is held. Unless there are exacerbating factors, an accused person who pleads guilty, whether on the day he first appears in court for plea or through a plea bargain agreement, should reap the fruits of his or her surrender. Afterall, the *Constitution* guarantees every accused person the right to a full trial, and nothing can stop an accused person who knows of his or her guilt from taking the court through the rigmarole of a full trial."

9. Again, in *Wakianda vs. Republic* [2016] KECA 181 (KLR), the Court held that:

> "Given all the safeguards available to an accused person through the process of trial, the entry of a plea of guilty presents a rare absolute capitulation; a throwing in of the towel and a giving of a walkover to the prosecution and often at great cost. A conviction comes with its consequences of varying gravity..."

10. In *Muruatetu & another vs. Republic; Katiba Institute & 5 Others* (Amicus Curiae) [2017] KESC 2 (KLR), the Supreme Court opined that a plea of guilty is one of the factors to be considered in determining an appropriate sentence for an accused person. This position is replicated at paragraph 4.8.20 of the *Sentencing Policy Guidelines* by the National Council on Administration of Justice, 2023, wherein it is stated that:

> "Where courts are satisfied that it is safe to accept a plea of guilty, they should grant a discount after considering the appropriate sentence based on culpability and harm specific to the offence alongside other aggravating and mitigating features. Once the court has arrived at that sentence, a discount of up to one third of the sentence should be applied where the offender has pleaded guilty at the earliest opportunity. Thereafter, e.g., where an offender has pleaded guilty just before, or during trial, a lesser reduction may be afforded."

11. Considering the subsisting jurisprudence in this Court and the High Court, the prison sentence handed to murder convicts generally oscillates between 25 and 40 years. Of course, the ultimate sentence of death and lower prison sentences are also imposed. For manslaughter, the common sentences passed are between 15 and 25 years. In stating so, we appreciate that each case must be treated according to its circumstances. Nevertheless, there is a need to ensure uniformity in sentencing. In this case, even if the aggravating circumstances outweighed the mitigating circumstances, the fact that the conviction arose from a guilty plea, even though secured through a plea agreement, ought to have been taken into account. This, however, is not to say that in all circumstances the sentence imposed

for the charged offence must be vacated on appeal. In this appeal, It is not in dispute that the appellant assaulted his father with a walking stick. He later surrendered to the police upon learning of the death of his father. Upon being arraigned in court, he entered into a plea bargain agreement. As already noted, even in the cases where an accused has pleaded not guilty and is taken through a whole trial, being found guilty, the sentences vary depending on the circumstances but generally range between 25 to 50 years. Whereas sentencing is a discretionary power, it must be exercised in a manner that takes into account the circumstances of the case, the sentencing policy and consistency in court decisions. Taking this into account, it is clear that in the circumstances of this case, a 50-year jail term was harsh and excessive, and in disregard of the subsisting jurisprudence on sentencing. It is on this basis that we will interfere with the sentence of 50 years imprisonment and substitute it with one of 20 years imprisonment. In doing so, we appreciate the aggravating circumstances of the offence, which were well captured by the trial court.

12. The upshot of the foregoing is that the appeal against sentence succeeds. The sentence of 50 years' imprisonment is hereby set aside and substituted with one of 20 years' imprisonment. As directed by the trial court, the sentence shall run from 17th October 2018, when the appellant, who was never out on bond throughout the trial, was first arraigned before the trial court.

DATED AND DELIVERED AT NAKURU THIS 25TH DAY OF JULY, 2025.

J. MATIVO

....

JUDGE OF APPEAL

M. GACHOKA C.Arb, FCIArb.

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JUDGE OF APPEAL

W. KORIR

....

JUDGE OF APPEAL

I certify that this is a True copy of the original

Signed

DEPUTY REGISTRAR