



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kahindi v Republic (Criminal Appeal 46 of 2017)  
[2024] KECA 1018 (KLR) (12 April 2024) (Judgment)**

Neutral citation: [2024] KECA 1018 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPEAL 46 OF 2017  
W KARANJA, J MOHAMMED & LK KIMARU, JJA  
APRIL 12, 2024**

**BETWEEN**

**PATRICK MWENDA KAHINDI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(An appeal from the judgment of the High Court of Kenya at Meru (R.P.V. Wendoh, J.) delivered on 27th October 2014 in HCCA No 13 of 2013)*

**JUDGMENT**

1. The appellant, Patrick Mwenda Kahindi was charged with the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. The particulars of the offence were that 18<sup>th</sup> January, 2013 at Muthiru village, Athi Location, Igembe South District, within Meru County, he murdered Thomas Mugwimi (the deceased).
2. Initially the appellant had been arraigned before the High Court at Meru on an information charging him with murder contrary to Section 203 as read with Section 204 of the Penal Code. The appellant denied the information and the case was to proceed to trial. Pursuant to a plea bargain agreement between the appellant and the respondent, the charge was reduced to one of manslaughter.
3. The appellant pleaded guilty to the charge of manslaughter. The facts led by the prosecution with regard to the offence were, inter alia, that the learned Judge erred in law and fact by failing to observe that the facts adduced by the prosecution were contradictory to sustain the appellant's conviction hence contravening Section 163 (1) of the Evidence Act; by failing to observe that the appellant's rights were violated when the evidence adduced by the prosecution rendered the trial unfair, hence violating Article 50(4) of the Constitution; and by failing to consider that at the first plea, the appellant pleaded not guilty, and later on changed his mind and pleaded guilty as he was not informed in advance



of the evidence that the prosecution intended to rely on, and thus violating Article 50(2) (j) of the Constitution.

4. The appellant admitted the facts as laid by the prosecution. The trial court convicted the appellant on his own plea of guilty and sentenced him to 25 years imprisonment having considered the mitigation proffered by the appellant.
5. Aggrieved by the sentence, the appellant appealed to this Court. At the hearing of the appeal the State was represented by Ms. Kitoto, Principal Prosecution Counsel. The appellant's main contention as set out in his written submissions was that the mandatory sentence imposed on him by the trial court was unconstitutional. He prayed for a reduction of his sentence on the basis that at the time of the commission of the offence he was a young man with little knowledge of the world and that he is deeply remorseful and has maintained peace with all inmates and uniformed staff besides being a first offender. He prays that this Court reduces his sentence. to match the mitigating factors set out in his written submissions.
6. In this respect it is apt to reproduce what the appellant stated by way of mitigation in his written submissions. In the material part he submits: -

“.....I was arrested on 18<sup>th</sup> January 2013, at this time I was a young man below 18 years of age with little knowledge of the world, I was unaware of the arms of laws of Kenya. Here in this region people always chew miraa and forget to give counselling to young man like me, this denied me moral values that would have helped to deal with emotional feelings such as anger therefore making me vulnerable to use excessive force. I am greatly remorseful. Because I am a first offender, I humbly beseech this mosaic (sic) court of appeal hear unto my cry and reduce my sentence as I have always been peaceful to all my inmates and uniformed staff, while am undergoing edification (sic).”

7. On her part, Ms. Kitoto submitted that the sentence was well merited and that the Judiciary Sentencing Policy Guidelines are silent on the part of manslaughter cases hence the starting point in the determination of a custodial sentence of offences of manslaughter would be case law. Further, that courts are inclined to impose a life imprisonment where a deadly weapon was used in committing the offence as is in the instant case. Counsel referred us to the decision of Kamoro Wanyingi v R [2008] eKLR on the proposition of the major aims of sentencing. Counsel urged us to uphold the sentence of twenty-five (25) years.

### **Determination**

8. We have considered the record of appeal, the submissions, the authorities cited, and the law. As this is a first appeal, the duty of this Court was set out in the case of Okeno v Republic [1972] EA 32 in the following terms:

“An appellant on a first appeal is entitled to expect the evidence as a whole to be submitted to a fresh and exhaustive examination (Pandya v Republic [1957] EA.

(336) and the appellate court's own decision on the evidence. The first appellate court must itself weigh conflicting evidence and draw its own conclusion. (Shantilal M. Ruwala v R. [1957] EA 570). It is not the function of a first appellate court merely to scrutinize the evidence to see if there was some evidence to support the lower court's finding and conclusion; it must make its own findings and draw its own conclusions. Only then can it decide whether the magistrate's findings should be supported. In doing so, it should make



allowance for the fact that the trial court has had the advantage of hearing and seeing the witnesses, see *Peters v Sunday Post* [1958] EA 424.”

9. We have been urged to interfere with the sentence imposed on the appellant by the High Court. Section 202 of the *Penal Code* provides as follows:-

“(1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.

(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.”

10. Section 205 of the *Penal Code* provides as follows:

“Any person who commits the felony of manslaughter is liable to imprisonment for life.”

The maximum sentence for an accused found guilty for the offence of manslaughter is, therefore, up to life imprisonment. The appellant herein was sentenced to twenty-five (25) years imprisonment.

11. Can we, as an appellate court in the circumstances interfere with the sentence imposed on the appellant? This Court in *Bernard Kimani Gacheru v Republic* [2002] eKLR stated 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.”

12. Accordingly, for us to interfere with the sentence imposed by the trial court, we must be satisfied that the sentence was manifestly excessive in the circumstances of the case; the trial court overlooked some material factors, took into account some wrong material or acted on a wrong material, or acted on a wrong principle of law.

13. In sentencing the appellant, the learned Judge stated as follows:

“I have considered the fact that the accused pleaded guilty to this offence, he is said to be a first offender. The court takes into account the fact that he is a young man whose family has suffered due to his actions. He has been in remand for about 2 years. However, taking into account the circumstances of the offence, that he was stealing, while armed and when caught he did not even withdraw, I hereby sentence him to serve 25 years imprisonment.”

14. In sentencing the accused, the learned Judge therefore took into consideration that the appellant was a young man and that he was a first offender.



15. In the circumstances, we find that the learned Judge took into account proper considerations when assessing the appropriate punishment to impose on the appellant. We find that the learned Judge made no misdirection as regards sentence.
16. We are therefore satisfied that the learned Judge exercised her discretion properly in sentencing the appellant based on the facts before her. The sentence imposed was lawful and was neither harsh nor manifestly excessive. Accordingly, we have no reason to interfere with the sentence imposed on the appellant.
17. The upshot is that this appeal has no merit and it is hereby dismissed.

**DATED AND DELIVERED AT NYERI THIS 12TH DAY OF APRIL, 2024**

**W. KARANJA**

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**JUDGE OF APPEAL**

**JAMILA MOHAMMED**

.....

**JUDGE OF APPEAL**

**L. KIMARU**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

