



REPUBLIC OF KENYA



**Miruka v Republic (Criminal Appeal E061 of 2024)  
[2025] KEHC 7214 (KLR) (27 February 2025) (Judgment)**

Neutral citation: [2025] KEHC 7214 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MIGORI  
CRIMINAL APPEAL E061 OF 2024  
A. ONG'INJO, J  
FEBRUARY 27, 2025**

**BETWEEN**

**ELLY OTHIAMBO MIRUKA ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal against the Judgment of Hon. C. N. C ORUO (PM) delivered on 25th February 2024 in Rongo CR. Case No. E239 of 2020 Republic V Elly Othiambo Miruka)*

**JUDGMENT**

1. The Appellant was convicted and sentenced to serve 10 years imprisonment for the offence of arson contrary to Section 332(a) of the [Penal Code](#) whereas his co-accused was sentenced to serve 1 year CSO at Waware Chief's camp for the offence of assault contrary to Section 251 of the [Penal Code](#).
2. The particulars to the charge in count 1 were that the Appellant Elly Othiambo Miruka and his co-accused on the 5<sup>th</sup> June 2020 at around 10.00 hrs in Waware Sub-Location in Awendo Sub-County in Migori County jointly willfully and unlawfully set fire to a building namely a dwelling house of Daniel Owawa Miruka and burned household valued at Kshs. 1,000,000/=.
3. In count 2 both were charged with the offence of assault contrary to Section 251 of the [Penal Code](#).
4. The particulars were that the Appellant and his co-accused on the 5<sup>th</sup> Day of July 2020 at about 10.00hrs in Waware Sub-Location in Awendo Sub-County in Migori County jointly intentionally and unlawfully assaulted George Ondoro Miruka thereby occasioning him actual bodily harm.
5. The Appellant was aggrieved by the conviction and sentence and he lodged the appeal herein vide Petition of Appeal filed on 8<sup>th</sup> April 2024 on the following grounds:

That the plea as taken was not unequivocal



6. That the learned Trial Magistrate disregarded all the open discrepancies in the particulars of the offence as captured by the prosecution.
7. That the sentence meted was overly harsh inspite of him being a 1<sup>st</sup> offender.
8. The Appellant prayed that the appeal be allowed , conviction quashed and sentence set aside.
9. In the Appellant's submission he included additional grounds as follows:
10. That the trial court erred in both law and fact by not complying with Article 50(2) (g) and (h) of *the Constitution*
11. That trial Magistrate erred in both law and fact by not specifying for which he was sentenced to serve 10years.

The Prosecution's case was that PW1

PW2

PW3

12. When the Appellant was placed on defense he gave sworn evidence and said he is an un-trained teacher. He said that he never committed the offence herein. He said that on 5.7.2020 he was with A2 resting under a tree at 10.00am when George Ondoro appeared using a path next to them and assaulted him. He said George was with 3 other people. That the Appellant raised alarm and his co-accused tried to help him and some villagers also responded to the alarm and George ran into Daniel Owawa's house. The Appellant said that villagers who responded to the alarm he raised wanted to know what was going on and there was commotion and George and his companion escaped through the space between the roof and the wall and disappeared into the sugarcane plantation.
13. The Appellant said he reported the matter to police at 16.20hrs and he found George at the station. That at the Police Station he was informed that he burnt a house but it was not true. He said by the time he left home he did not see the house on fire. The Appellant said that the Complainant was not at home and he was only told of the incident. He said he had no grudge with Daniel Owawa.
14. In cross examination the Appellant said that they had a land dispute with the Complainant and there was bad blood between the 2 families. He said that because of the land dispute a fight ensued between him and George but he was nobody was injured but a house was burnt in the process. The Appellant said George threatened to kill him and he reported the threats. He said that Everlyn and his mother were present at the scene and witnessed the incident.
15. DW2 Bernard Mbogo said that he was at Daniels wife's place when they heard some noise and found Daniels house was on fire and they tried to rescue household goods but the house was locked from inside. That they heard something explode from inside the house. That Daniel and Ondoro went to the scene with police and arrested the Appellant with his co-accused together with Julius Mbogo.
16. In cross examination DW2 said he went and found the house was on fire. He said he saw Liz at the scene. He said he did not see George but he saw A and A2 at the scene. He said even the Appellant's mother was at the scene but she was doing nothing.
17. DW3 the 2<sup>nd</sup> accused person also gave sworn statement and denied having committed the offence. He said that on 5.7.2020 he was seated under a tree at 10.00am when Everlyn took to him tea. That George Ondoro came with 3 people who were unknown to him and they tried to greet A1. That George got hold of A1's neck and they started fighting. That he tried to separate them but his hand got injured



and he raised alarm and villagers responded and George entered into Daniel's house and locked it from inside.

18. That when the villagers came George and the 3 people who were with him escaped from Daniel's house escaped through the opening between the roof and wall and ran into the sugarcane plantation.
19. DW3 said he advised the Appellant to go and report since he had been threatened.
20. That when they saw smoke from Everlyns house and they asked what had happened she said she was cooking. He said that Evelyn had left something in the gas when George entered the house. That as people went to rescue the house they heard an explosion and nobody could get into the house . He said that nobody listened to what he said he had witnessed and he was charged.
21. In cross examination DW3 said that they had land dispute between family members which was being sorted by the Chief. He said George was the cause of the problem. Dw3 said that he did not know Liz the wife of George and he could not tell if Elly injured George and he could not tell if Elly was injured. He said that the house burnt after the fight and he witnessed it.
22. DW4 Lucy Sheldon Odongo testified and said that A2 was her husband and that on 5.7.2020 she was at home with A2(DW3) when Everlyn whose house got burnt wen to their house and found her with the husband. She said that her husband spoke to Everlyn and in course of it they heard screams and when they rushed to where the noise came from she saw Ondoro get into Everlyns house. That Everlyn told them to scream for help. DW4 said that Ondoro left Everlyn's house through the opening between the wall and the roof but they did not know where he went to. That they saw smoke come from Everlyns house . That later Daniel and Ondoro returned in company of police A 1and 2 were arrested. DW4 said she did not see George fight with the Appellant. She said Everly the wife of Daniel was present.

This Appeal was canvassed by way of written submissions.

The Appellant's submissions are dated 1

On sentence the Appellant submitted that

The Respondent's submissions are dated

### **Analysis and Determination**

23. In a first appeal, the duty of the court was stated in Mark Oiruri Mose vs. R (2013) eKLR thus;  

“.... the Court is duty bound to revisit the evidence tendered before the trial court afresh, evaluate it, analyze it and come to its own independent conclusion on the matter but always bearing in mind that the trial court had the advantage of observing the demeanor of the witnesses and hearing them give evidence and give allowance for that.”
24. Having considered the grounds of Appeal, and revisited the evidence tendered before the trial court afresh as well as the submissions by the rival parties, the issues for determination are whether the prosecution proved the charge beyond reasonable doubt.  

Section 117 (b) of the [Penal Code](#) it is provided that:
25. This court finds that the appeal has merit and is allowed. The Appellant to be released forthwith unless lawfully detained.  

Right of Appeal 14 days.

**DATED, SIGNED AND DELIVERED THIS 27TH DAY OF FEBRUARY, 2025**



.....

**HON. JUSTICE A. ONGINJO**

**JUDGE**

In the presence of: -

