Sigei & another v Republic (Criminal Appeal E024 of 2023)
[2025] KEHC 3908 (KLR) (27 March 2025) (Judgment)

Neutral citation: [2025] KEHC 3908 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT BOMET

CRIMINAL APPEAL E024 OF 2023

JK NG'ARNG'AR, J

MARCH 27, 2025

BETWEEN

WESLEY KIPRONO SIGEI ..... 1ST APPELLANT

LEMISON KIPKOECH MUTAI ..... 2ND APPELLANT

AND

REPUBLIC ..... RESPONDENT

(From the conviction and sentences in Criminal Case Number E161 of 2022 by Hon. Kiniale L. in the Senior Principal Magistrate's Court at Bomet)

JUDGMENT

1. The Appellants were charged for the offence of arson contrary to section 332 (a) of the *Penal Code*. The particulars of the offence were that on 29th January 2022 at Kapsinendet Village in Chepalungu Sub-County within Bomet County, they wilfully and unlawfully set fire to two dwelling houses and a shop valued at Kshs 1,400,000/= the property of Shadrack Chepkwony.

2. The Appellants were also charged with the second count of threatening to kill contrary to section 223(1) of the *Penal Code*. The particulars of the offence were that on 29th January 2022 at Kapsinendet Village in Chepalungu Sub-County within Bomet County, jointly with others not before court without lawful excuse uttered words threatening to kill Shadrack Chepkwony after tying the hands of the said Shadrack Chepkwony using a rope.

3. At the conclusion of the trial, the Appellants were convicted on both counts and the 1st Appellant was sentenced to serve twenty (20) years imprisonment for the first count and three (3) years imprisonment for the second count. The 2nd Appellant was sentenced to serve ten (10) years imprisonment for the first count and three (3) years imprisonment for the second count. The sentences were to run concurrently.

4. Being dissatisfied with the Judgement delivered on 11th May 2023 the 1st Appellant appealed aginst the whole Judgement and relied on the grounds reproduced verbatim as follows:-

   i. That the learned trial Magistrate erred in law and fact in convicting me on evidence which did not meet the required standard of proof in accordance with the law.

   ii. That the trial Magistrate erred in law and fact by relying on extrinsic evidence which was not adduced during the trial.

   iii. That the trial Magistrate erred in law and fact by depending on evidence which was based on conspiracy between the Appellant, the complainant (PW1) and PW2.

   iv. That the trial Magistrate erred in law and fact by convicting me on charges that were not tallying or favourable.

   v. That the learned trial Magistrate erred in both law and fact by relying on uncorroborated evidence.

   vi. That the trial Magistrate erred in both law and fact by relying on inconsistent and contradictory evidence.

   vii. That the trial Magistrate erred in law and fact by rejecting my plausible defence without any explanation.

5. The 1st and 2nd Appellants filed a supplementary Petition of Appeal and relied on the following grounds reproduced verbatim:-

   i. That the learned trial Magistrate erred in law and fact in failing to establish that there was no corroboration of the complainant's evidence by the witnesses who happened to be part of the mammoth crowd that surrounded the complainant's house as it was torched.

   ii. That the learned trial Magistrate erred in law and fact in holding that there was sufficient evidence to convict the Appellants when none of the witnesses pointed out the specific person who poured the fuel on the houses and the one who lit the march stick and ignited the fire that engulfed the house.

   iii. That the learned trial Magistrate erred in law and fact in connecting the clinical officer's evidence with the offence of arson as the two are distinct in nature and perpetration.

   iv. That the learned trial Magistrate erred in law and fact in finding that it was the Appellants who gathered the mammoth crowd that participated in the commission of the offence whereas no evidence was adduced to the fact of summons to anybody by the Appellants.

   v. That the learned trial Magistrate further erred in law and fact in declaring that the Appellants are the ones who burnt the house of the complainant whereas there are specific persons according to the evidence that bought the petrol and poured it on the houses and lit the matchstick and the same are not the Appellants.

   vi. That the trial Magistrate erred in meting out excessive sentence.

6. This being the first appellate court, I have a duty to re-evaluate the evidence on record. This was succinctly stated in Odhiambo vs Republic Cr. App No. 280 of 2004 (2005) 1 KLR where the Court of Appeal held that:-

> "On a first appeal, the court is mandated to look at the evidence adduced before the trial afresh, re-evaluate and reassess it and reach its own independent conclusion. However, it must warn itself that it did not have the benefit of seeing the witnesses when they testified as the trial court did and therefore cannot tell their demeanour."

7. I now proceed to summarize the case in the trial court and the parties' submissions in the present Appeal in the succeeding paragraphs.

The Prosecution/Respondent's case

8. It was the Respondent's case that on the material day, the Appellants alongside others tied Shadrack Chepkwony's (PW1) hands with a rope and threatened to kill him. That the Appellants further set ablaze PW1's two dwelling houses and a shop

9. It was the Respondent's case that Mercy Langat (PW2) a clinical officer at Siongiroi Health Centre examined PW1 and found injuries that were consistent with being tied with a rope.

10. The Respondent stated that they collected debris from PW1's houses and shop and they forwards the same to the Government Chemist for analysis and the Government Analyst stated that petrol had been detected in the said debris.

11. The Respondents filed their written submissions dated 3rd June 2024 and submitted that the Appellants were positively identified as the perpetrators. That the Appellants, PW3, PW4, PW5 and the complainant (PW1) were neighbours and well known to each other. They further submitted that the incident occurred during the day and the Appellants were identified by recognition.

12. It was the Respondent's submission that the offence of arson was proved to the required standards. That PW3, PW4 and PW5 confirmed that the property in question belonged to the complainant. It was their further submission that there was evidence that the complainant's shop was razed down by fire and that the Appellants set the said shop on fire. That the Appellants had no justifiable cause to set the complainant's house on fire.

13. The Respondent submitted that the offence of threatening to kill was proved to the required standards. That the Appellants tied PW1 with a rope and threatened to burn him alongside his shop. They further submitted that the Appellants told the complainant that it was the last time he was seeing his property.

14. It was the Respondent's submission that it was clear from the Respondent's conduct that they issued a death threat. It was their further submission that the motive was that the Appellants suspected PW1 to be involved in occult activities.

The Appellants'/Accused's case

15. Wesley Kiprono Sigei (DW1) denied committing the offence. He testified that on the material day, he never went to the complainant's (PW1) shop. He further testified that PW1 was his landlord and had no grudge with him and that PW1's testimony was a lie.

16. Lemison Kipkoech Mutai (DW2) denied committing the offence. He testified that he was not involved in the offence yet he was arrested. He further testified that on the material day, he went to Sigor Market then to Mulot before he went home where he was informed of the incident.

17. At the time of writing this Judgement, the Appellants had not filed their written submissions.

18. I have gone through and given due consideration to the trial court's proceedings, the Grounds of Appeal filed on 17th May 2023, the supplementary Petition of Appeal dated 6th November 2024 and the Respondent's written submissions dated 3rd June 2024. The following issues arise for my determination:-

    i. Whether the Prosecution proved the offence of arson beyond reasonable doubt.

    ii. Whether the Prosecution proved the offence of threatening to kill beyond reasonable doubt.

    iii. Whether the Appellants' defences placed doubt on the Prosecution case.

    iv. Whether the sentences preferred against the Appellants were harsh.

        i. Whether the Prosecution proved the offence of attempted arson beyond reasonable doubt

19. Section 332 of the *Penal Code* provided:-

    Any person who wilfully and unlawfully sets fire to—

    (a) any building or structure whatever, whether completed or not; or

    (b) any vessel, whether completed or not; or

    (c) any stack of cultivated vegetable produce, or of mineral or vegetable fuel; or

    (d) a mine, or the workings, fittings or appliances of a mine, is guilty of a felony and is liable to imprisonment for life.

20. I concur with Gitari J. in Kimaku & 4 others v Republic [2024] KEHC 8720 (KLR), where she held:-

    " The ingredients of the offence of arson are:-

    a. Proof of ownership of a building or a structure

    b. Proof that a building or structure was set on fire.

    c. Proof that the accused person is the one who set the building on fire.

    d. Proof that the assailant set the building or structure on fire without any lawful justification."

21. On the first ingredient, the Prosecution had to prove that the burnt structures or buildings belonged to the complainant (PW1). In his testimony, PW1 testified that he had a shop and a house and they were made with bricks and timber respectively. PW1 further testified that his shop had assorted household items when it was burnt. It was PW1's testimony that the Appellants told him that it was the last time he (PW1) was seeing his shop and house. PW1's testimony in regards to the ownership of the shop and house remained uncontroverted upon cross examination.

22. Wesley Chepkwony (PW4) testified that he had known PW1 for over 20 years and that the Appellants set ablaze the canteen where PW1 operated from and his house. Jackline Chebet (PW5) also testified that she had known PW1 for a long time and was able to identify PW1's house and shop when she was shown the pictures during her testimony. She further testified that on the material day, she smoke

from PW1's shop. PW4's and PW5's testimony on PW1's ownership of the shop and house remained uncontroverted after cross examination.

23. From the evidence and analysis above, it is clear to me that the ownership of the house and the shop was not in doubt. It is my finding therefore that the shop and house (the structures) belonged to Shadrack Chepkwony (PW1).

24. On the second and third ingredients, the Prosecution had to prove that the said structures were set ablaze by the Appellants. Shadrack Chepkwony (PW1) testified that on the material day, the Appellants tied him with a rope, told him that it was the last time he was seeing his house and shop and proceeded to burn the same house and shop. Paul Cheruiyot Chepkwony (PW3) testified that he was an eye witness and that the Appellant and others (Fred, Eric and Titus) who were not before the trial court were involved in burning PW1's house and shop. When PW3 was cross examined, he testified that the 1st Appellant was the one who led people and opened PW1's house.

25. Wesley Chepkwony (PW4) testified that he was an eye witness and that on the material day, the Appellants and Eric Kipkosgei led PW1 to his house and set it on fire. PW4 further testified that the Appellants also wanted to set PW1 but he was rescued by police officers. When PW4 was cross examined, he reiterated that he saw with his own eyes the Appellants burning PW1's house. Jackline Chebet (PW5) testified that she saw the Appellants leading PW1 to his house and she later saw smoke from PW1's house. PW5 reiterated her testimony upon cross examination.

26. No. 103589 PC Victor Marembe (PW6) testified as the investigating officer. He testified that debris was collected from the house and shop and forwarded to the Government Analyst. PW6 testified that the Government Analyst confirmed the presence of petrol in the debris. He produced the Government Analyst Report as P.Exh 6a. PW6 also produced photographs of the burnt house and shop as P.Exh 1a, b, c, d, e, f, g, h, i and j and their accompanying certificate as P.Exh 4.

27. I have looked at the pictures (P.Exh 1 a-j) and they depict burnt structures. I have also looked at the Government Analyst Report (P.Exh 6a) and the report indicated that petrol was detected in the debris from the structures. Based on the evidence above, I am satisfied that PW1's house and shop were burnt and the offence was committed by the Appellants and it goes without saying that the commission of the offence was illegal and unjustifiable. I must point out that the allegation that PW1 was involved in devil worship was not a justifiable cause or reason to burn his house and shop.

28. Flowing from the above, it is my finding that the Prosecution proved all the ingredients precedent to proving the offence of arson to the required standard.

ii. Whether the Prosecution proved the offence of threatening to kill beyond reasonable doubt.

29. Section 223(1) of the *Penal Code* provided:-

> Any person who without lawful excuse utters, or directly or indirectly causes any person to receive, a threat, whether in writing or not, to kill any person is guilty of a felony and is liable to imprisonment for ten years.

30. I concur with Kimaru J. (as he then was) in Martin Ng'ang'a Kamanu v Republic [2020] KEHC 5815 (KLR), where he held:-

> " The prosecution was required to establish the following ingredients of the charge: that the Appellant without lawful excuse uttered words which amounted to a threat to kill the complainant. The uttering of these words must be made in the context that the complainant perceives that he is under threat of losing his life. The context must come out in the evidence

that will be adduced by the prosecution witnesses and the explanation given by the accused in his defence."

31. As stated earlier in this Judgement, PW1 testified that the Appellants tied him with a rope and told him that it was the last time he was seeing his shop and house. PW1 further testified that the Appellants also wanted to set him on fire but police officers came to his rescue. When PW1 was cross examined, he testified that his hands were tied from behind.

32. PW1's testimony was corroborated by Paul Chepkwony (PW3), Wesley Chepkwony (PW4) and Jackline Chebet (PW6) who all testified that they saw the Appellants tie PW1 with a rope with the intention of burning him and that he (PW1) was rescued by police officers.

33. Mercy Langat (PW2) testified that she was a clinical officer at Siongiroi Health Centre. That when she examined PW1, she noted that PW1 had injuries that were consistent with rope ligature. PW2 testified that PW1's upper limbs had hyper pigmentation, blisters and tenderness on his wrists. PW2 produced treatment notes and P3 Form as P.Exh 2 and 3 respectively. I have looked at P.Exh 2 and 3 and I have confirmed that the contents corroborate PW2's testimony.

34. From the above, it is clear to me that PW1 was tied with a rope and his life was threatened when the Appellants attempted to burn him together with his house and shop. Were it not for the police officers who came to his rescue, the Appellants would have succeeded in their mission. In conclusion, it is my finding that the Prosecution proved all the ingredients precedent to proving the offence of threatening to kill to the required standard.

iii. Whether the Appellants' defences cast any doubt on the Prosecution's case

35. I have captured the Appellant's defences early in this Judgement where they both denied committing the offences. I have looked at the 1st Appellant's and 2nd Appellant's defences in their entirety and it is my finding that the said defences were weak and were mere denials. In total, it is my finding that the Appellant's defence was weak and did not cast any doubt on the Prosecution case.

ii. Whether the sentences preferred against the Appellants were harsh.

36. The general principles upon which the first appellate court acts in regards to sentencing are now well settled. It has jurisdiction to interfere with sentence imposed by the trial court if it is satisfied that in arriving at the sentence, the trial court did not take into account a relevant factor or that it took into account an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the Court should not lose sight of the fact that in sentencing, the trial court exercises discretion and as long as the discretion is exercised judicially and not capriciously, the appellate court should be slow to interfere with that discretion. (See Peter Mbugua Kabui v Republic [2016] KECA 713 (KLR)

37. As earlier stated, the sentence for arson contrary to section 332a of the *Penal Code* was a maximum of life imprisonment and the sentence for threatening to kill contrary to section 223(1) of the *Penal Code* was a maximum of ten years. The trial court sentenced the 1st Appellant to serve 20 years imprisonment and the 2nd Appellant 10 years' imprisonment for the offence of arson. The trial court also sentenced the 1st and 2nd Appellant to imprisonment of 3 years each for the offence of threatening to kill and that the sentences were to run concurrently.

38. Having considered the circumstances of the case, it is my finding that the sentences meted on the Appellants were just, fair and commensurate. The trial court properly exercised its discretion and did

not apply any wrong principle in sentencing the Appellants. In the circumstances thereof, this court has no reason to interfere with the sentences.

39. For avoidance of doubt, I uphold the 1st Appellant's and 2nd Appellant's conviction and sentences.

40. In the end, the Appeal has no merit and is dismissed.

JUDGEMENT DELIVERED, DATED AND SIGNED THIS 27TH DAY OF MARCH, 2025.

.....

J.K.NG'ARNG'AR

JUDGE

Judgement delivered in the presence of the J.K. Koech for the Appellants, Njeru for the Respondent and Susan (Court Assistant).