



REPUBLIC OF KENYA



**KENYA LAW**  
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**Korir v Republic (Criminal Appeal E033 of 2022)  
[2025] KEHC 8521 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 8521 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
CRIMINAL APPEAL E033 OF 2022  
JK NG'ARNG'AR, J  
APRIL 30, 2025**

**BETWEEN**

**HILLARY KIBET KORIR ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. L. Kiniale PM dated 4th August, 2022 at the Magistrate's Court at Bomet, Criminal Case No.E 1824 of 2021)*

**JUDGMENT**

**Introduction and Background**

1. The Appellant was charged in the lower court with the offence of arson contrary to 332(a) of the Penal code. The particulars were that on 8<sup>th</sup> December, 2021 at around 1600 hours in Kapkisiara Village within Bomet County the Appellant willfully and unlawfully set fire to a dwelling house valued at Kshs. 400, 000/- belonging to Hellen Kirui.
2. Upon hearing the case, the learned trial magistrate found that the Respondent ("the Prosecution") had proven its case beyond reasonable doubt and proceeded to convict and sentence the Appellant as per section 215 of the Criminal procedure code to a jail term of 20 years. It is this decision that the Appellant has appealed against through grounds set out in his Petition of Appeal received on 17<sup>th</sup> November, 2022. The respondent relies on written submissions received on 25<sup>th</sup> December, 2023.

**Analysis and Determination**

3. This is the first appellate court and in *Okeno v. R* [1972] EA. 32, the Court of Appeal for East Africa laid down what the duty of the first appellate court is. It is to analyze and re-evaluate the evidence which was before the trial court and itself come to its own conclusions on that evidence without overlooking the conclusions of the trial court. There are instances where the first appellate court may, depending



on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may reverse those conclusions and there is nothing objectionable in doing so, provided it is clear that the court has considered the evidence on the basis of the law and the evidence to satisfy itself on the correctness of the decision. ( see David Njuguna Wairimu v Republic KSM CA CRA No. 28 of 2009 [2010] eKLR and Pandya v Republic(1957) EA 336)

4. The Appellant’s appeal is premised on two grounds. First, the appellant contends that the trial court acted on its discretion and meted out a 20 years imprisonment which is too harsh and capricious to the Appellant. Secondly that the learned magistrate erred in by sentencing the appellant to 20 years imprisonment which is a mandatory minimum sentence. In essence the appeal herein is only on sentence and not conviction as per amended ground of appeal dated 17<sup>th</sup> November, 2022

5. The trial court meted a 20 year sentence which by law is permissible under section 215 of the Criminal Procedure Act which provides as follows:

“The court having heard both the complainant and the accused person and their witnesses and evidence shall either convict the accused and pass sentence upon or make an order against him according to law, or shall acquit him.”

6. I have considered the offence herein and the circumstances and also the mitigating circumstances. The Sentencing Policy Guidelines 2023 outlines the objectives of sentencing at paragraph 1.3.1 as follows:-

“Sentences are imposed to meet the following objectives. There will be instance in which the objectives may conflict with each other in so far as possible, sentences imposed should be geared towards meeting the objectives in totality.

- i. Retribution
- ii. Deterrence
- iii. Rehabilitation
- iv. Restorative justice
- v. Community protection
- vi. Denunciation
- vii. Reconciliation
- viii. Reintegration.”

7. From the above, it is clear that the sentencing policy has the twin objective of deterrence and correction. Each case must also be considered on their own circumstance. See Thomas Mwambu Wenyi v Republic (2007) KECA 756 KLR)

8. I have considered the mitigating circumstances by the accused. The place and significance of mitigation was expounded by the court in the case of Joseph Kaberia Kahinga & 11 others v Attorney General [2016] KEHC 3275 (KLR) in the following words:-

“But what is mitigation in our context? Simply understood, the word mitigation means the act of lessening or making less severe the intensity of something unpleasant such as pain, grief or extreme circumstances. It is an act of making a condition or consequence less severe



and in our case it is the act of making a punishment or sentence in a criminal case less severe. In n Black’s Law Dictionary Free Online Legal Dictionary 2<sup>nd</sup> Ed. mitigation is defined as:

“Alleviation; abatement or diminution of a penalty or punishment imposed by law. ‘Mitigating circumstances’ are such as do not constitute a justification or excuse of the offence in question, but which, in fairness and mercy, may be considered as extenuating or reducing the degree of moral culpability.”

### **Conclusion and Disposition**

9. In the instance case, the circumstances and considering the age of the appellant twenty (20) years is harsh. I will exercise my discretion and reduce the sentence to Ten (10) years imprisonment. The sentence to run from 14<sup>th</sup> December, 2021 when the accused took plea and placed in custody.

**DATED AND DELIVERED AT BOMET THIS 30<sup>TH</sup> APRIL, 2025**

**JUDGE**

**J. K. NG’ARNG’AR**

Court of Assistant: Siele

N/A for the Appellant.

Ms Njeri for the state.

