



REPUBLIC OF KENYA



KENYA LAW
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**Sanduku v Republic (Criminal Appeal E026 of 2024)
[2025] KEHC 5329 (KLR) (30 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 5329 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITALE
CRIMINAL APPEAL E026 OF 2024**

RK LIMO, J

APRIL 30, 2025

BETWEEN

KELVIN WANJALA SANDUKU APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal arising from the conviction and sentence of Hon. M.W. Ghati (Resident Magistrate) in Kitale Chief Magistrate's Court Criminal Case No. 3432 of 2023 delivered on 27th February, 2024)

JUDGMENT

1. The appellant herein, Kelvin Wanjala Sundaku Alias Mavleti was charged with 2 counts of offences namely;
 - i. Preparation to commit a felony contrary to section 308(1) of the *Penal Code* and
 - ii. Malicious damage to property contrary to Section 339(1) of the *Penal Code*.
2. He was charged vide Kitale CM's Court Criminal Case No.E3432 of 2023 and the particulars of the offence in respect to Count 1 was that on 6/10/2023 at Liyavo Village, Kwanza Sub-County within Trans-Nzoia County he jointly with another not before court were found with 2 gunny bags and a slasher inside the compound of Seed of Hope Orphanage Home in circumstances that indicated that they had intent to commit a felony namely stealing.
3. In the 2nd Count, the particulars of the offence were that at the same place and time, the appellant jointly with another not before court willfully and unlawfully damaged a chain link fence valued at Kshs.3,000/- the property of Seed of Hope Orphanage Home.



4. The appellant pleaded guilty to Count 1 but denied committing the offence in Count II. However after trial he was found guilty and convicted on both Counts. In Count 1 he was sentenced to serve 7 years while in Count II he was sentenced to serve 1 year and both sentences were to run concurrently.
5. He felt aggrieved and filed this appeal raising 6 grounds. In light of the appellant's oral submissions, I will not go into the grounds because the appellant abandoned his appeal on conviction and instead prayed for leniency on the sentences imposed.
6. In respect to the 1st Count, Section 308(1) of the *Penal Code* provides as follows:

“Any person found armed with any dangerous or offensive weapon in circumstances that indicate that he was so armed with intent to commit any felony is guilty of a felony and is liable to imprisonment of not less than seven years and not more than fifteen years”.

The appellant was found with a slasher which is potentially an offensive weapon and a gunny bag which indicated his plans and that of his fellow accomplice were out to commit a crime. Besides that he admitted the charge. The law as correctly stated by the State provides for a minimum sentence of 7 years and a maximum of 15 years in jail. The trial court meted out the minimum sentence which in my view was lenient given that the appellant was not a first offender. The ODPP provided information that he had been charged and convicted previously for the offence of House Breaking and Stealing vide Kitale CMCC Cr. Case No.E2734 of 2022. He should therefore count himself lucky for getting a lenient sentence of 7 years.

7. In respect to Count II, under Section 339(1) of the *Penal Code* a person found guilty of malicious damage to property is liable to be imprisoned for 5 years. In this instance the trial court handed the appellant 1 year imprisonment. Both sentences were ordered to run concurrently because both offences were carried out in the same transaction. The appellant cannot claim that the sentence was either unlawful or harsh.

In the premises this court finds no merit in this appeal. The same is dismissed. Both sentences are upheld.

DELIVERED, DATED AND SIGNED AT KITALE THIS 30TH DAY OF APRIL , 2025.

HON JUSTICE R.K. LIMO

KITALE HIGH COURT

Judgment delivered in open court

In the presence of;

Mr Mugun for the Respondent

Kelvin Wanjala Sanduku – appellant present

Court assistants – Duke/Chemosop

