



REPUBLIC OF KENYA



**Adero v Republic (Criminal Appeal E005 of 2024)  
[2025] KEHC 4839 (KLR) (25 April 2025) (Judgment)**

Neutral citation: [2025] KEHC 4839 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL APPEAL E005 OF 2024**

**DK KEMEL, J  
APRIL 25, 2025**

**BETWEEN**

**JAMES AGGREY ADERO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the judgment of Hon. B. Limo (S.P.M.)  
delivered on 5th February 2024 in Siaya CM CR No. E0341 of 2023)*

**JUDGMENT**

1. The Appellant herein James Aggrey Adero was charged with the offence of grievous harm contrary to Section 234 of the Penal Code. The particulars of the offence were that on the 29<sup>th</sup> day of April 2023 at Rawa village, Koyeyo sub-location, Central Alego Location in Siaya Sub-County within Siaya County, unlawfully caused grievous harm to Consolata Awuor Otieno by use of a knife.
2. After a full trial, the Appellant was convicted and sentenced to life imprisonment.
3. Aggrieved by both the conviction and sentence, the Appellant has filed the present appeal via a Memorandum of Appeal wherein he raised the following grounds:
  - i. That the trial magistrate erred in law and fact in finding the Appellant guilty of grievous harm when no grievous harm was proved beyond reasonable doubt.
  - ii. That the trial magistrate erred in law and in fact by not complying with Article 50 of the Constitution in the trial process and the sentence.
  - iii. That the trial magistrate failed in both law and fact by not considering the mental health of the Appellant, who is currently suffering from epilepsy.

The Appellant therefore, prays that the appeal be allowed and he be set at liberty.



4. This being a first appeal, this Court must re-consider and re-evaluate the evidence adduced before the trial Court so as to arrive at its independent findings and conclusions. (See *Okeno vs. Republic* [1972] EA 32). In doing so, this Court is required to take cognizance of the fact that it neither saw nor heard the witnesses as they testified before the trial Court and, therefore, it ought to make due allowance in that respect as was held in *Ajode v. Republic* [2004] KLR 81.
5. PW1 Consolata Awuor Otieno testified that on the 29/4/2023 at about 4.00pm while at home, the Appellant went to her home, removed a knife and stabbed her in her ear. That her mother in law raised alarm for help and that soon thereafter she lost consciousness. That she was taken to Siaya County Referral Hospital where she was admitted for eight days, and that upon discharge, she reported the incident to the police. She identified the following documents which were duly marked as follows:
  - i. P3 form dated 2/5/2023 marked PMFI-1
  - ii. CT-Scan from Siaya County referral hospital marked pmfi-2
  - iii. Discharge summary form marked pmfi-3
  - iv. Referral form marked pmfi-4
  - v. TB screen marked pmfi-5
  - vi. Treatment notes marked PMFI 6(a-g)
  - vii. Receipts marked PMFI -7

She testified further that upon discharge she was referred to Moi Teaching and Referral Hospital for further treatment. That she has since lost her sight and penial hearing.

There was no cross-examination by the Appellant.

6. Delea Adhiambo Adero (PW2) testified that she is a farmer, and that the Appellant is her son. That the complainant is a wife to her other son. She stated further that on 29/04/2023 at about 4 Pm while at her home, the Appellant referred to the complainant as a dog. That the Appellant then punched her with his fist. That he then took a knife and stabbed her on the head. That the complainant oozed a lot of blood. That a boda boda was then called and that the complainant was taken to hospital. That the husband of the complainant was then alerted.

There were no questions posed on cross-examination by the Appellant.

7. Denis Otieno Okoth (PW3) testified that on 29/4/2023 at around 4pm, he was at Siaya Township when he received a phone call from Pw1 that she had been stabbed by the Appellant. He rushed to her home. On arrival, he saw blood at the doorstep of Pw1's house. He immediately called PW1's husband and agreed that they take her to Siaya County Hospital, where she was admitted for eight days, treated and later discharged. That upon discharge, PW1 was referred to Moi Teaching and Referral Hospital in Eldoret for further treatment.

On cross-examination, he stated that he was a boda boda rider and a neighbor. That he saw the Appellant standing outside his house.

8. Brian Ochieng (PW4) stated that he is 14years old, a pupil at Liganwa Primary school. That the Appellant is his uncle. That on 29/04/2023 at 4.00pm he was at home when PW1 came and that the Appellant attacked her. That he was with his sister. That he saw that PW1 was injured and that he rushed and called his mother. That they called Atieno who came and changed PW1's clothes which were soaked with blood after she had been stabbed.



There were no questions asked on cross-examination.

9. Celine Atieno (PW5) testified that she is a neighbor and a business woman by profession. That she knows the Appellant as James Adero who is her neighbor. She stated further that on 29/04/2023 at about 4.30 pm heading to 5.00 pm, she was at home when PW4 who is her son came running while crying. That her son informed her that PW1 had been stabbed. That she proceeded to the house of PW1, where she found her stabbed in the ear. She learnt that PW1 had been injured in her grandmother's house but had managed to crawl to her house which is near that of her grandmother. That she assisted in changing her clothes, then a boda boda man came and took PW1 hospital.

On cross-examination, she stated that the Appellant is her neighbor and had seen him earlier at his mother's house.

10. William Osomo (PW6) testified that he is a clinical officer attached at Siaya County Referral Hospital with registration No. 18665 and ID No. 28702804. That he had with him a P3 form dated 2/5/2023 for patient No. 007006123. He stated further that 30/4/2023, the survivor alleged to have been assaulted. He stated that the victim sustained a cut wound on the left side of the eye. That the patient presented a case of headache and lack of eye vision. That at the time of assessment, she had a loss of vision and that a diagnosis of moderate head injury with a CT scan showed a cut on the head and a fracture of bone around the eye socket. She had a head injury. He established the age of the injuries as two days. That a sharp object was used. He went on to state that stitching was done on the patient and sent to an eye surgeon specialist. That the degree of injury was assessed as grievous harm. That he signed the P3 form and stamped it. That he also had the CT-scan report with a conclusion that there was air in the brain due to the injury and fracture of the bone of the eye socket. That he also had a form from eye-specialist with a diagnosis injury. That the patient went to Aga Khan Hospital, where an MRI test was done and it was normal. She was then referred to Sabatia Eye Clinic for medical attention. He produced the documents as follows:

- i. P3 form dated 2/5/2023 produced as Exhibit-1
- ii. CT-Scan from Siaya County referral hospital produced as exhibit-2
- iii. Discharge summary form produced as exhibit-3
- iv. Referral form produced as exhibit-4
- v. TB screen produced as exhibit -5
- vi. Treatment notes produced as exhibit 6(a-g)
- vii. Payment Receipts produced as exhibit -7

On cross –examination, he stated that the patient was stabbed with a sharp object and that he did not know whether there were eye witnesses to the incident.

11. No. 257001 PC (W) Mercy Masika (PW7) attached at Segere Police Post and formerly of Kowet Police Post. She recalled that she was on duty on 30/4/2023 when she received the complainant, Consolata Awuor, in the company of her husband and son Patrick Amondi. That the complainant reported that she had been assaulted by a person well known to her as James Adero on 29/4/2023 at 1600hrs. That she advised her to seek medical attention. That she issued her with a P3 form which was later filled. That the Doctor ascertained the degree of injury as grievous harm. That she later recorded the statements of the complainant and all other witnesses. That on 23/6/2023 she trailed the Appellant who was at Kowet area and arrested him. That she later charged him with the present charges.



On cross examination, she stated that she arrested the Appellant from Kowet Police Post. That the officers of Kowet Police Post arrested the Appellant. That she re-arrested him at the police post. That the Appellant is reported to have stabbed the complainant and that there are eye witnesses.

That marked the close of the prosecution's case.

12. The court ruled that a prima facie case had been established and that the Appellant was put on his defense. The Appellant elected to remain silent, and that marked the close of the defense case.
13. The appeal was canvassed by way of written submissions. Both parties duly complied.
14. The appellant submitted that he is not contesting the conviction by the trial court but against the sentence of life imprisonment.

He relied on the case of Justus Kitsao Manyeso vs. Republic Criminal Appeal No. 12 of 2021, where the court declared the life sentence unconstitutional. He submitted that the life sentence is harsh, excessive, unconstitutional, and degrading punishment and that he prayed that the court revise/review the sentence. He further relied on the case of Bernard Barasa vs Republic, Criminal Appeal No.313 of 2018 where Makhandia J, substituted the life sentence with that of 10 years' imprisonment.

15. It was also the Appellant's submission that the provisions of section 333(2) of the Criminal Procedure Code was not considered by the trial court in passing the sentence. That the sentence ought to run from the date of arrest. (See Court of Appeal decision in Abolfathi Mohamed vs. Republic (2018) eKLR)

In conclusion, he prayed that the appeal be allowed in totality, the sentence be substituted or sentence be set aside and he be set at liberty.

16. The Respondent, on the other hand, submitted that they proved the ingredients of the offence of grievous harm beyond reasonable doubt as by law required and thus the conviction should be upheld.
17. As regards the issue of sentence, the Respondent submitted that it is the trial court that is bestowed with the discretion to sentence the perpetrator. It was submitted that the sentence is neither harsh nor illegal.
18. I have considered the record the trial court and the submissions presented by the parties as well as the authorities cited. It is not in dispute that the Appellant, in his submissions, has sought to abandon his appeal against conviction and is only appealing against the sentence. That being the position, I find the issue for determination is whether the sentence imposed was legal and lawful.
19. In addressing this, it is noted that several decisions have been made to wit that an appellate court will in most cases be reluctant to interfere with the sentence rendered by a trial court unless it is shown that the said sentence is illegal or meted irregularly.

In the landmark case by the Supreme Court in Petition No. 18 of 20223 Republic vs. Joshua Gichuki Mwangi held that the mandatory minimum sentences under the Sexual Offences Act are lawful and or constitutional and therefore courts have no jurisdiction to impose lesser sentences.

20. My understanding of the above decision of the Apex court is that the mandatory sentences are lawful only in sexual offences. In the Muruatetu case, it was likewise held by the Supreme Court that life sentence is still lawful in murder cases.
21. In the instant case however, the offence is that of grievous harm, and that the Penal Code indicates only the sentence of life imprisonment as the only punishment for anyone found guilty of the said offence.



22. There are, however, several decisions where the arbiter shifted from the norm of strict application of the law and became creative. Such cases include Bernard Barasa vs. Rep (supra), where Makhandia J, substituted a life sentence with 10 years' imprisonment. In the instant case and the circumstances, I am persuaded that this is a ripe case for such. I am further guided by the decision of the Court of Appeal in Justus Kitsao Manyeso vs. Rep(supra) where the life sentence in cases (other than sexual offences and murder) was declared unconstitutional.
23. Guided by the above jurisprudence and in the spirit of the doctrine of stare decisis, iam inclined to interfere with the sentence imposed by the trial court. It is noted that the trial court called for a pre-sentence report. The same is dated 19/2/2024 and it indicates that the complainant suffered grave injuries as she completely lost her sight and that she has suffered emotional and psychological trauma as she cannot perform her chores as a wife in her home. The report further indicated that the Appellant is a violent person in the village and that his family and the villagers live in fear of him. It is clear that the offence committed by the Appellant calls for a deterrent sentence. The whole of his family members live in terror of the Appellant. Indeed, the complainant escaped death by the skin of her teeth. Her life has been turned upside down and that she has to live with blindness for the rest of her life. The actions by the Appellant were abhorrent and that had he resorted to other channels of redress such as engaging family members or the village elder, the complainant's eyesight would not have been interfered with. The custodial sentence is appropriate in the circumstances of the case as the Appellant requires to undergo comprehensive rehabilitation before he could be released back to society. It is noted that the Appellant was a first offender. I find that a sentence of thirty(30) years imprisonment would be suitable in the circumstances. As the Appellant was in custody throughout the trial, then the period spent in custody must be factored as provided for under section 333(2) of the *Criminal Procedure Code* and that the same shall commence from the date of arrest namely 23/6/2023.
24. In view of the foregoing observations, the Appellant's appeal succeeds. The sentence of life imprisonment is hereby set aside and substituted with a sentence of thirty (30) years' imprisonment, which shall commence from the date of arrest namely 23/6/2023.

It is so ordered.

**DATED AND DELIVERED AT SIAYA THIS 25<sup>TH</sup> DAY OF APRIL, 2025.**

**D. KEMEI**

**JUDGE**

In the presence of:

James Aggrey Odero.....Appellant

Mocha.....for Respondent

Mboya.....Court Assistant

