



REPUBLIC OF KENYA



KENYA LAW
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**Mohamed v Republic (Criminal Appeal E014 of 2024)
[2025] KEHC 10117 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 10117 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARSEN
CRIMINAL APPEAL E014 OF 2024**

**JN NJAGI, J
JUNE 27, 2025**

BETWEEN

SWABIR ABDALLA MOHAMED APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The appellant herein was convicted of three counts namely:

Count 1 - Assaulting a police officer contrary to section 103(d) of the *National Police Service Act*, 2011. The particulars of the offence were that on the 14th November 2021 at around 1100 hours along Seafront area of Langoni Location in Lamu Central Sub-County within Lamu County, he assaulted No.113642 PC Ouma Michael, a police officer attached to Lamu police station by biting him on the right chest while the officer was in due execution of lawful duties.

Count 2 - Resisting arrest of a police officer contrary to Section 103 (a) of the *National Police Service Act* 2011. The particulars of the offence were that on the same day, time and place as in count I, he resisted the arrest of the officer named in count I by fighting him back while the officer was in due execution of his lawful duties.

Count 3 - Malicious injury to property contrary to section 339(1) of the *Penal Code*. The particulars of the offence were that on the same time and place as in count I he willfully and unlawfully destroyed a trouser navy blue in colour worth Kshs.1,000/= the property of Ouma Michael (herein referred to as the complainant).

2. In count 1, the appellant was sentenced to pay a fine of Kshs.250,000/= in default to serve 3 years imprisonment. In count 2 he was sentenced to pay a fine of Kshs.250,000/= in default to serve 3 years



imprisonment, and in count 3 he was sentenced to a fine of Kshs.50,000 in default to serve 12 months imprisonment.

3. The appellant was aggrieved by the conviction and the sentence and filed the instant appeal. The grounds of appeal are that;
 1. That he was a first offender at the time of the commission of the offence
 2. That the offences were committed in the same transaction.
 3. That section 14 of the *Criminal Procedure Code* provides that a court has the power to direct that the sentence shall run concurrently.
 4. That the sentence imposed is both harsh and excessive since he shall end up serving a longer sentence than intended by the statute.
4. The evidence of PC Ouma Michael PW2 was that he was on the material day on patrol with other police officers – PC Nurow PW2, CPI Gikonyo, PW4 PC Murage, CI Kigen, PC Munai and PC Sawek PW5. That PC Sawek told them that he had seen a suspect who had jumped police bond. He showed them the suspect and asked them to assist him arrest him. That they rushed towards the suspect, the appellant, and informed him that they were arresting him for jumping bail. That the appellant became unruly and refused to go to the police station. They surrounded him and physically restrained him. He fought them. He jumped on PC Ouma and bite him on his chest. The appellant tried to break free from their grasp. PC Ouma pushed him away. As he did so, the appellant grabbed at his trousers and tore them up along the right hemline. His leg became extremely exposed. They pinned him down. They called the group of Cpl Kigen to give them strength. They managed to handcuff him and had him taken to hospital.
5. The evidence of PC Ouma was corroborated by PC Sawek PW5 and PC Nurow PW2. PC Gikonyo PW4 testified that his group reached the scene and found the appellant having bitten PC Ouma and tore up his trousers.
6. PC Ouma was treated at King Fahad hospital and examined by a clinical officer, PW1 who found him with a bite mark on the chest. The degree of injury was assessed as harm.
7. The case was investigated by PC Shikuri, PW6 who charged the appellant with the offences. During the hearing he produced the torn trouser as exhibit, P Exhibit 1. The clinical officer PW1 produced the P3 form in court as exhibit, P. Exhibit 2.
8. When placed on his defence, the appellant opted to remain silent.

Submissions

9. The appellant submitted that the trial court in sentencing him failed to ensure that the aggregation of the sentence was appropriate in view of the fact that he was a first offender. He urged the court to consider his mitigation circumstances and reduce the sentence.
10. The respondent on the other hand submitted that the charges the appellant was convicted of were proved beyond reasonable doubt. That the prosecution called 6 witnesses in the case but the appellant opted to remain silent when placed on his defence, it was submitted that the sentences imposed by the trial court were in accordance with the law and were fair. The respondent urged the court to dismiss the appeal.



Analysis and Determination

11. This being a first appeal, the court is clothed with the jurisdiction to re-evaluate and re-analyze the evidence of the trial court and arrive at its own independent conclusion as was cited in the case of David Njuguna Wairimu V – Republic (2010) eKLR where the Court of Appeal stated:-

“The duty of the first appellate court 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 appellant court may, depending on the facts and circumstances of the case, come to the same conclusions as those of the lower court. It may rehash those conclusions. We do not think there is anything 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 decisions.”

12. The evidence that the appellant resisted arrest and bite PC Ouma on the chest and tore up his trousers was corroborated by his colleagues – PC Nurow PW3 and PC Sawek PW5. PC Gikonyo PW4 reached the place and found the appellant having committed the offences. PC Ouma was examined by a clinical officer at King Fahad County Referral Hospital and was found to have sustained a bite mark on the chest and the degree of injury assessed as harm. The P3 form corroborating the injures was produced in court as exhibit. The damaged trouser was produced as exhibit. It is clear that the appellant resisted arrest and in the process bite PC Ouma and tore up his trousers. He did so willingly. The offences of assaulting a police officer, resisting arrest and malicious damage to property were proved beyond reasonable doubt against the appellant. The convictions are thereby upheld.

Sentence

13. The sentence for assaulting a police officer and resisting arrest under Section 103(a) of the *National Police Service Act* is a fine not exceeding Kshs.1 million or imprisonment for a term not exceeding 10 years or both. The appellant was in each of the counts of assault and resisting arrest sentenced to pay a fine of Kshs.250,000/= in default to serve 3 years imprisonment. In the count of malicious damage to property, he was sentenced to a fine of Kshs.50,000/= in default to serve 12 months imprisonment. He was in aggregate to serve a total of 7 years imprisonment in case he failed to raise the fine. The appellant did not pay the fine and is serving the sentence.
14. In my view, the total sentence of 7 years was manifestly excessive. The appellant has served the sentence since 4th March 2022 and even before then he appears to have been in custody awaiting trial since the date of his appearance in court on 15/11/21. That to-date amounts to having served a period of more than 3 ½ years imprisonment. I consider that to be sufficient sentence for the offences committed.
15. Consequently, I substitute the sentences imposed by the trial court to the period served so far and I order the appellant be released from prison custody forthwith unless lawfully held.

DELIVERED, DATED AND SIGNED AT GARSEN THIS 27TH DAY OF JUNE 2025.

J. N. NJAGI

JUDGE

In the presence of:

Mr. Mkongo for Respondent



Appellant- present in person at G. K. Prison Malindi

Court Assistant – Ndonge

