



REPUBLIC OF KENYA



**Chirau v Republic (Criminal Appeal E015 of 2024)
[2025] KEHC 8982 (KLR) (26 June 2025) (Judgment)**

Neutral citation: [2025] KEHC 8982 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CRIMINAL APPEAL E015 OF 2024
RPV WENDOH, J
JUNE 26, 2025**

BETWEEN

PETER CHIRAU APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The appellant, Peter Chirau was charged with offence

Count I: Illegal cutting of trees contrary to section 334(c) of the *Penal Code*.

2. The particulars of the charge were that between 10/8/2024 to 25/8/2024, at Kapenguria G.K. Prisons in West Pokot, willfully and unlawfully cut down twenty-two (22) trees, the property of Kapenguria G.K Prisons.

Count II: Trespass with intent to commit an offence, contrary to section 5(1) of the *Trespass Act*.

3. The particulars of the charge are that on diverse dates between 10/8/2024 to 25/8/2024, willfully and unlawfully trespassed into Kenya Prisons Service Forest and illegally cut down twenty-two (22) trees.

4. The appellant was arraigned before the Chief Magistrate’s court on 27/9/2024. The appellant pleaded guilty to the charges and was convicted and was sentenced to four (4) years imprisonment.

5. The appellant is aggrieved by the sentence meted on him and filed this appeal complaining that he pleaded guilty to the charges and it was his first appearance in court; that his mitigation was not considered because he has a wife and children and parents to care for and that he is remorseful.

6. He prayed that the appeal be allowed and the sentence be reduced.



7. Miss Selina, the Prosecution Counsel did not oppose the appeal. She did not give the reasons why.
8. Sentencing is an exercise of the court's discretion which is guided by *the Constitution* and applicable law. Upon conviction of an offence under Section 334(c) one is liable to imprisonment for a period of fourteen (14) years. For a conviction under section 5(1) (a) of the *Trespass Act*, one is liable to imprisonment for six months or fine not exceeding Kshs.2,000/= or to both fines and imprisonment.
9. The court is also guided by the Judiciary sentencing Policy guidelines which are as follows:
 - i. Retribution: to punish the offender for his/her criminal conduct in a just manner;
 - ii. Deterrence; to deter the offender from committing a similar offence subsequently as well as to discourage other people from committing similar offences;
 - iii. Rehabilitation; to enable the offender reform from his/her criminal disposition and become a law-abiding person;
 - iv. Restorative justice; to address the needs arising from the criminal conduct such as loss and damages;
 - v. Community Protection; to police the community by incapacitating the offender.
 - vi. Denunciation; to communicate the community's condemnation of the criminal conduct.
 - vii. Reconciliation; to mend the relationship between the offender the victim and the community
 - viii. Reintegration; To facilitate the re-entry of the offender into the society.
10. The Supreme court also added to the guidelines in the case of Francis Karioko Muruatetu & Another -V- Republic Supreme Court Petition 1/2015 which are as follows; -
 1. Age of the offender;
 2. Being a first offender;
 3. Whether the offender pleaded guilty;
 4. Character and record of the offender;
 5. Commission of the offence in response to gender-based violence;
 6. Remorsefulness of the offender;
 7. The possibility of reform and social re-adaptation of the offender;
 8. Any other factor that the court considers relevant.
11. After he was convicted, the appellant was given an opportunity to mitigate and he said he had a wife and children. He has repeated the same in his grounds. According to him the sentence is harsh. The trial court considered the fact that the appellant was not a first offender because he had been convicted in Kapenguria E465/2024. I have called out for the said file and indeed the appellant had been sentenced to serve one year on probation for the offence of stealing. He had been sentenced on 4/06/2024 and by 27/9/2024, he had been arraigned before the Chief Magistrate for plea in this matter. It means he committed this offence within three (3) months of being placed on probation and he cannot claim to have been in court for the first time when he took plea in this matter. Being a repeat offender, the court was justified in handing the appellant a deterrent sentence. Probation did not have any positive impact on the appellants behaviour.



12. I note that the court sentenced the appellant to four (4) years imprisonment. The court did not specify whether it was on the 1st or 2nd count. The said sentence was therefore unlawful and I hereby set it aside. I sentence the Appellant as follows

Count I – three (3) years imprisonment.

Count 2- six (6) months imprisonment.

Sentence to run concurrently.

DELIVERED, DATED AND SIGNED AT KAPENGURIA THIS 26TH DAY OF JUNE, 2025

R. WENDOHO.

JUDGE

Delivered in open court in the presence of; -

Prosecution Counsel – Mr. Suter

Appellant – present

Juma/Hellen- Court Assistants.

