Kamotho v Republic (Criminal Appeal E007 of 2025)
[2025] KEHC 12375 (KLR) (28 August 2025) (Judgment)

Neutral citation: [2025] KEHC 12375 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MARSABIT

CRIMINAL APPEAL E007 OF 2025

FR OLEL, J

AUGUST 28, 2025

BETWEEN

KAMAU KAMOTHO .... APPELLANT

AND

REPUBLIC .... RESPONDENT

(Being an Appeal arising from the Conviction and Sentence of Hon. A. K. Arome (Pricipal Magistrate), in Marsabit Principal Magistrate Court, Criminal Case No. E119 Of 2024, delivered on 20{{^th}} August, 2024)

JUDGMENT

A. Introduction

1. The Appellant herein, KAMAU KAMOTHO, was on 20th August, 2024, charged with the offence of Causing Grievous Harm contrary to Section 234 of the Penal Code. The particulars were that on the 18th day of August, 2024, at Marsabit Township in Marsabit central sub county within Marsabit county unlawfully did grievous harm to ADAN ISAAK.

2. The Appellant took plea on 13th January, 2025, and after the charge was read out to him, he pleaded guilty by stating that the charge was "true", but added that he had been assaulted by about 10 men, one of the person being "Hirbo". The prosecution counsel proceeded to state the facts of the case. when asked again if the facts were correct, the appellant again confirmed that indeed the said facts were correct. He stated that, "The facts are true. I stabbed the complainant".

3. The court thereafter convicted the appellant on his own plea of guilt, and after mitigation, sentenced him to serve a term of two [2] years imprisonment. The Appellant, being dissatisfied by the said conviction and sentence passed did file his petition of Appeal and raised the following grounds of Appeal:-

a. The learned trial Magistrate failed to consider my mitigation and that he was unwell during plea taking.

4. The Appellant therefore prayed that his Appeal be allowed, his conviction and sentence be set aside, and he be set free.

B. Parties Submissions

5. The Appellant submitted that he was never accorded a fair trial as he had a right to defend himself after being confronted by an armed mob, craving to lynch him for threatening, "Hirbo". The court had also failed to take into consideration that he was a disabled person and he had to lock himself in a room before being rescued by the police. At the police station he had also suffered injustice as they had refused to allow him to access medical treatment and was unlawfully remanded for three days before being arraigned before court.

6. He therefore faulted the trial court for proceeding to take his plea while he unwell yet he ought to have been given ample time to recuperate before being allowed to take plea. He urged this court to find that his plea was not "unequivocal" and be pleased to set aside his conviction and sentence.

7. The State/prosecution opposed this Appeal and stated that the charge and particulars thereof were read out to the Appellant in a language he understood, "Kiswahili" and he pleaded guilty. The facts too, were thereafter read out and the Appellant and he once again confirmed that the said facts were true, and further reaffirmed that he stabbed the complainant. The Appellants conviction was therefore proper/lawful and he was barred by section 348 of the Penal code, from challenging the same.

8. On the issue of sentence, the prosecution urged the court to note that Section 234 of the Penal Code provided for a life sentence, and therefore the sentence of two [2] years handed down to the Appellant was not excess or harsh s alleged. They thus urged this court to find that the Appeal as filed was not merited and be pleased to dismiss the same.

C. Determination

9. This being the first appeal, this court is expected to re-evaluate the evidence tendered before the trial Court and to come up to its own logical conclusion by taking into account the fact that it did not have the advantage of seeing and hearing the witnesses and their evidence, and/or see their demeanor. This court is guided by various established citations, including Okeno v Republic [1927[E.A 32 & Pandya v Republic [1975] EA 366 & Peter's v Sunday Post[1958] E.A. 424.

10. The Appellant in his Petition of appeal challenges both his conviction and sentence. Section 348 of the Criminal Procedure Code expressly bars an appeal from subordinate court where an accused person was convicted upon a plea of guilt, except to the extent that he challenges the legality of the sentence. The said section provides that:-

> " No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent and legality of the sentence."

11. It therefore follows that the appellant is, by virtue of Section 348 of the Criminal Procedure Code, barred from challenging his conviction, unless he challenges the extent or legality of the sentence imposed on him by the trial court. Be that as it may, it has been held severally by courts that this bar only operates where the plea is unequivocal. Accordingly, the court is not barred from inquiring as to whether a prima facie plea of guilty was unequivocal or not. Similarly, it does not bar the court

from inquiring as to whether the facts as read out to the accused constituted any offence. See Anthony Muthoga Munene v Republic [2022] eKLR and Hando s/o Akunaay v Rep [1951] EACA 307 where it was held that:-

> " Before convicting on any such plea, it is desirable not only that every Constituent of the charge should be explained to the accused, but that he should be required to admit or deny every such constituent."
>
> "Where an accused person who has been called upon to plead under Section 207 of the Criminal Procedure Code in the subordinate admits the charge the proviso to Subsection [2] requires the prosecution to outline the facts upon which the charge is founded. The truth or otherwise of the charge is a combination of three things, the charge, the particulars of the offence contained in the charge-sheet or information as the case maybe, as well as the facts outlined where the accused pleads guilty. The facts therefore are as important part of the plea as the charge itself. The nature and element of the offence in totality must be understood by the accused and the trial court must be satisfied about this accepting them as true.

12. Before the trial court, the charge against the accused was read out to him in a language he understood [Kiswahili], and he pleaded guilty to the same by stating that, "true", but added that he was assaulted by 10 men, one of the person being "Hibro". The prosecution then went ahead and read out the summarized facts of the case and produced the P3 form, which established that he had stabbed the complainant on the cheek, using a screw driver which lead to the complainant suffering a fractured jaw. The accused, at this stage, when asked if the facts were corrected, stated that " The facts are true. I stabbed the complainant."

13. The question before this court for determination is simple. Was the plea taken equivocal or unequivocal, given the circumstances and facts raised in this Appeal? In the opinion of this court, it is clear that the appellant fully understood and agreed that the charges and particulars of the offence as read out to him were correct, and that is why he pleaded guilty. The prosecution counsel then went ahead and explained the facts to the appellant, and he admitted they were true and reaffirmed that he stabbed the complainant. The provisions of Section 207 of the Criminal Procedure Code was thus complied with, and prima facie, the plea of guilty by the Appellant was unequivocal.

14. The second issue raised by the Appellant that he was unwell and did not understand the plea taking process is a new issue raised in his submission but unfortunately was not an issue raised during the proceedings. It is therefore a moot point. Finally, it might as well be true that the Appellant was attacked by a crowd of people, but that fact would be a mitigating factor during sentencing and does not alter and/or affect his clear admission of guilt. The Appellants conviction stands, it is lawful and is upheld.

15. On Sentencing, the same is determined at the discretion of the trial court after considering the facts of the case, Judiciary Sentencing Policy Guidelines and Penalty provided for under the law.

16. The principles guiding interference with sentencing by the appellate court were properly set out in the case of S. v Malgas [1] SACR 469[SCA] at Para 12, where it was held that:-

> " A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would usurp the sentencing discretion of the trial court.........however, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed

by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is marked that it can properly be described as "shocking", "startling" or "disturbingly inappropriate".

17. Section 234 of the Penal Code provides a life sentence for a person convicted of the offence of causing "grievous harm". The Appellant was allowed to mitigate and was sentenced to serve a two [2] years imprisonment term. There is no error in the legality of the sentence passed nor is there any misapplication of the law/material misdirection by the trial court, which has been pointed out by the Appellant to warrant an interference by this Court.

D. Disposition.

18. I do therefore find that this Appeal lacks merit and the same is dismissed.

19. Right of Appeal 14 days.

20. It is so ordered

READ, SIGNED, AND DELIVERED VIRTUALLY AT MARSABIT ON THIS 28TH DAY OF AUGUST, 2025.

FRANCIS RAYOLA OLEL

JUDGE

DELIVERED VIA THE VIRTUAL PLATFORM, TEAMS THIS 28TH DAY OF AUGUST, 2025.

In the presence of:

Present .... Appellant

Mr. Otieno ....For O.D.P.P

Julie ....Court Assistant