



**Rono v Republic (Criminal Appeal E045 of 2022)
[2024] KEHC 1628 (KLR) (23 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1628 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL APPEAL E045 OF 2022
RN NYAKUNDI, J
FEBRUARY 23, 2024**

BETWEEN

FELIX KIPLETING RONO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal on re-sentencing in Cr Case No.1208 of 2018
in a judgment delivered Hon. E. Kigen (SRM) on 18.2.2019)*

JUDGMENT

1. The appellant approached this court seeking resentencing. The appellant was charged with 2 counts of the offence of committing an unnatural offence contrary to section 162(b) of the *Penal Code*. The particulars of the offence are that on the 2nd day of March 2018 at Kiptundu Village of Eldoret West Sub County within Uasin Gishu County, he had carnal knowledge of an Ayrshire cow, the property of Esther Koskei and that on the 4th of March 2018 he had carnal knowledge of an Ayrshire cow, the property of Pamela Tuikong.
2. The appellant pleaded not guilty and the matter proceeded to final hearing. The prosecution produced four witnesses whereas the appellant was the only witness in his defence case. The trial court considered the evidence and the testimonies and convicted the appellant of both counts, sentencing him to five years' imprisonment to run consecutively.
3. Being aggrieved with the sentence, the appellant instituted the present appeal premised on the grounds on the face of it. The appellant's grounds for mitigation for sentence are that the period spent in time is adequate punishment considering he had spent one year in remand. Further, that he has taken advantage of the opportunities in prison to gain skills that will be useful in the outside world. He urged the court to set him at liberty.



Analysis & Determination

4. The only issue that arises in this appeal is;

Whether the court should interfere with the sentence?

The leading authority on the question of interfering with sentence is that of *Wanjama v Republic*, Criminal Appeal No. 204 of 1970 [1971] EA 493, 494, where Trevelyan J held as follows: -

“An appellate Court should not interfere with the discretion which a trial Court has exercised as to sentence unless it is evident that it overlooked some material factor, took into account some immaterial factor, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the case.”

5. This court has supervisory jurisdiction granted by Article 165(6) of the Constitution it is stated as follows:-

“(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.”

6. Further, section 333(2) of the Criminal Procedure Code provides as follows;

Subject to the provisions of section 38 of the Penal Code (Cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

7. The 2016 Judiciary of Kenya Sentencing Policy Guidelines lists the objectives of sentencing at page 15, paragraph 4.1 as follows:

“Sentences are imposed to meet the following objectives:

- 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 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. Criminal conduct ordinarily occasions victims’, communities’ and offenders’ needs and justice demands that these are met. Further, to promote a sense of responsibility through the offender’s contribution towards meeting the victims’ needs.
- V. Community protection: To protect the community by incapacitating the offender.



VI. Denunciation: To communicate the community's condemnation of the criminal conduct.”

8. The appellant was in custody from the time he was charged on 09/03/2018 to the date of his sentence on 18/02/2019. Therefore, he was in custody for about one year before sentencing. From the judgement of the trial court, the learned magistrate did not take this into account during sentencing.

9. The appellant was charged and convicted under Section 162 (2)(b) of the Penal Code which provides as follows

Any person who—

- (a) ...
- (b) has carnal knowledge of an animal; or
- (c) ...

is guilty of a felony and is liable to imprisonment for fourteen years

10. Considering the nature of the offence committed, the sentence of 10 years imprisonment was harsh and excessive in the circumstances. The appellant has already served six years of his sentence and I find that that is sufficient punishment for the offence committed. Section 354(3)(b) of the Criminal Procedure Code, in setting out the powers of the High Court, states as follows;

- (3) The court may then, if it considers that there is no sufficient ground for interfering, dismiss the appeal or may—
 - (b) in an appeal against sentence, increase or reduce the sentence or alter the nature of the sentence.

11. One of the key factor in this appeal is the overview of sentencing framework carried out by the trial court. From the record the transaction aspects of the offence was individualized whereas the circumstance of it could have been made to run concurrently. I see where the learned magistrate was coming from in view of the information provided by the prosecution in the charge sheet. Society abhors such immoral conduct established of the appellant but the question remains whether the remedy is in the lengthy incarceration in prison custody. I believe the object of sentencing is not to satisfy public opinion but to serve the public interest. A sentencing policy that caters predominately or exclusively for public opinion is inherently flawed. It remains the courts duty to impose fearlessly unappropriated and fair sentence even if the sentence does not satisfy the public. Our courts often prefer and describe in their sentencing orders deterrence to be the most important aim of sentencing. Rehabilitation or reformation is also one of the standard aims of punishment and courts should apply an hybrid system where home based rehabilitation can be incorporated in the overall scheme of transforming the prisoner. As far this case is concerned, the purpose of the 10 years imprisonment was to punish the appellant for his moral degradation and the basic importance of the seriousness of the crime. The measure that the 10 years imprisonment would deter the appellant is moot. As a result, much has been written about how harm should be understood and how the degree of harmfulness can be accessed and how this degree of harm should be related to the offender's culpability. I know there are real testimonies of prisoners who have been rehabilitated within the correctional services Act by an order of long stay in custody but again rehabilitative effect of the prisoner outside the wall of our jails should not be completely ignored. The conclusion I reach in this matter is that the six years period weighing all the



physical and mental faculties of the appellant he ought to have learned his lessons. There is no cogent evidence that if released using the concurrent principle he is likely to re-offend and if he does so the gates of our legal system remain wide open to receive him so that the upper hand of the law can take its place.

11. For those reasons I hereby set aside the sentence of 10 years' imprisonment and substitute it with one of time served. The appellant is to be set free immediately unless otherwise lawfully held.

12. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 23RD DAY OF FEBRUARY, 2024

R. NYAKUNDI

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

In the presence of:

Appellant in person

Mr. Mugun for State

