



**Leamus v Director of Public Prosecution (Criminal Appeal  
E107 of 2023) [2024] KEHC 1753 (KLR) (22 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1753 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MERU  
CRIMINAL APPEAL E107 OF 2023  
TW CHERERE, J  
FEBRUARY 22, 2024**

**BETWEEN**

**LENGESO LEAMUS ..... APPELLANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION ..... RESPONDENT**

*((Being an appeal against sentence in Isiolo Chief Magistrate's Court  
Criminal No. 011 of 2023 by Hon. Lucy.K.Mutai CM) on 20th July, 2023)*

**JUDGMENT**

1. Appellant was on 20<sup>th</sup> July, 2023 sentenced to serve 20 years' imprisonment for the offence of grievous harm contrary to section 234 of the *Penal Code*.
2. Appellant is aggrieved by the sentence which he says is not proportionate to the offence as he was a first offender and him and complainant were drunk when the offence was committed.
3. The Respondent through Ms. Rita submitted that the prosecution case was proved but made no response concerning Appellant's appeal on sentence.
4. I have considered the appeal and taken cognizance of the fact that this court will only interfere with the exercise of discretion by the trial magistrate's court when sentencing the Appellant in limited cases. In *Bernard Kimani Gacheru v Republic* [2002] eKLR, the Court of Appeal stated thus:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with the sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence



is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist. (See also *Wanjema v Republic* [1971] E.A.493.”

5. Similarly, the Court of Appeal in *Abamad Abolfathi Mobammed & another v Republic* [2018] eKLR held at Page 25 of its judgment as follows:

“As what is challenged in this appeal regarding sentence is essentially the exercise of discretion, as a principle this Court will normally not interfere with exercise of discretion by the court appealed from unless it is demonstrated that the court acted on wrong principle, ignored material factors; took into account irrelevant considerations; or on the whole that the sentence is manifestly excessive.

6. Section 234 of the *Penal Code* under which Appellant was charged and convicted provides that: Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.

7. Appellant stabbed the complainant on the left lumbar region causing an injury to the colon which had to be repaired surgically. Complainant was treated as an inpatient for 4 days.

8. In sentencing the Appellant, the learned trial magistrate rightly considered that Appellant had caused complainant a life-threatening injury and concluded that the offence called for a deterrent sentence.

9. The *Criminal Procedure Bench Book* at page 116 provides that:

“The sentences imposed should be geared towards achieving the following objectives set out in the sentencing policy guidelines (paragraph 4.1):

- i. Retribution.
- ii. Deterrence.
- iii. Rehabilitation.
- iv. Restorative justice.
- v. Incapacitating the offender.
- vi. Denouncing the offence, on behalf of the community”.

10. I totally agree with the sentiments of the trial magistrate concerning the Appellant but since he is a first offender, I find that he ought to benefit from a less severe sentence.

11. Consequently, the 20-year imprisonment term imposed on Appellant is substituted with 5 years’ imprisonment term from 21<sup>st</sup> January, 2023 when he was arrested.

**DELIVERED AT MERU THIS 22ND DAY OF FEBRUARY 2024**

**WAMAE. T. W. CHERERE**

**JUDGE**

Appearances

Court Assistants - Kinoti/Munene



Appellant - In person

For DPP - Ms. Rita Rotich (PC-1)

