



**Abdi v Republic (Criminal Appeal E032 of 2023)
[2024] KEHC 6733 (KLR) (29 May 2024) (Judgment)**

Neutral citation: [2024] KEHC 6733 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL APPEAL E032 OF 2023**

**JN ONYIEGO, J
MAY 29, 2024**

BETWEEN

MAHAD HUSSEIN ABDI APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the sentence by Hon. C.Maundu (CM) in the Chief Magistrate's Court at Garissa Criminal Case No. 832 of 2019 delivered on 13.12.2019)

JUDGMENT

1. The Appellant was charged and convicted on his own plea of guilty in respect of three counts:
2. Count I, He was faced with the charge of assault causing grievous harm contrary to section 234 of the *Penal Code*. The particulars being that on 18.10.2019 at around 1100hrs at Garissa Medium Prison in Garissa Township within Garissa County, he did grievous harm to one Samuel Yaa Baya.
3. Count II, he was charged with the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. The particulars were that on 18.10.2019, at around 1100hrs at Garissa Medium Prison in Garissa Township within Garissa County, he unlawfully assaulted one Vincent Kilonzo Muthama thereby occasioning him actual bodily harm.
4. Count III, he was charged with the offence of malicious damage to property contrary to section 339(1) of the *Penal Code*. The particulars being that on 18.10.2019 at around 1100hrs at Garissa Medium Prison in Garissa Township within Garissa County, willfully and unlawfully damaged one dressing mirror worth Kshs 7,000/- the property of Garissa Medium Prison.
5. Having pleaded guilty, he was sentenced to serve ten (10) years, two (2) years and six (6) months imprisonment respectively.



6. The appellant being aggrieved by the said sentence filed a petition of appeal on 29.08.2023 contending that the sentence meted out by the trial court was not only harsh but also not commensurate to the offences herein.
7. The court gave directions that the appeal be canvassed by way of written submissions which directions the parties did not comply with. It is worth noting that the appellant is not challenging conviction. The only issue for determination is whether the sentence imposed herein is harsh and excessive in the circumstances.
8. It is trite that sentencing is at the discretion of the trial court. However, the same must be exercised judiciously. Guidance on the subject can be derived from the Court of Appeal decision in the case of *Shadrack Kipkoech Kogo v R Eldoret Criminal Appeal No 253 of 2003* where it was held that:

“sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered. (Also see also *Sayeka v R* (1989 KLR 306)].
9. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or considered some wrong material, or acted on a wrong legal principle. Even if the appellate court feels that the sentence is heavy and that it might itself not have passed that sentence, the same cannot be sufficient ground for interfering with the discretion of the trial court on sentencing unless, anyone of the matters already stated grounds is shown to exist.
10. The appellant was charged with the offence of assault causing grievous harm contrary to section 234 of the Penal Code which carries a punishment of upto life imprisonment. In this case, the appellant was sentenced to serve 10 years’ imprisonment. Having perused the P3 Form and the treatment notes, I note that the complainant suffered right foot injury and a bruise behind the left ear. It was noted that the complainant suffered soft tissue injuries in as much as the same was assessed as grievous harm. Taking into account the mitigation on record and the severity of the injuries suffered, it is my finding that the sentence of 10 years imprisonment is excessive.
11. In respect to count two on assault contrary to section 251 of the *Penal Code* which carries a punishment of up to 5 years imprisonment, the appellant was sentenced to serve 2 years’ imprisonment. According to the P3 form annexed, the complainant sustained an injury on the left knee and left arm. It was also noted that the same were soft tissue injuries and the same was assessed as harm.
12. On malicious damage to property contrary to section 339(1) of the *Penal Code* (count 3) which carries a punishment of up to five years’ imprisonment, the appellant was sentenced to six months’ imprisonment having in mind that the property destroyed was a mirror costing Kshs 7,000/-. Having pleaded guilt to the charges, the appellant did save the court precious time.
13. I have considered the mitigation by the appellant that he was found with a mobile phone in the prison and so a fellow prisoner reported him hence resulting to the commission of the offences herein. I have also considered the injuries inflicted on the complainant which were not aggravated in degree as the same were noted to be soft tissue injuries. It is against that backdrop that I hold the view that the appellant should have been accorded a more lenient sentence in respect of count one.
14. The upshot is that the sentence of ten years’ imprisonment in respect of count one is hereby set aside and therefore substituted with four years’ imprisonment term; The sentence in respect of counts two



and three shall remain undisturbed and therefore upheld. Sentences to run concurrently from the date of sentence.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 29TH DAY OF MAY 2024.

J.N.ONYIEGO

JUDGE

