



REPUBLIC OF KENYA



KENYA LAW
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**Amisi v Republic (Criminal Appeal E019 of 2024)
[2024] KEHC 7669 (KLR) (27 June 2024) (Judgment)**

Neutral citation: [2024] KEHC 7669 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT HOMA BAY
CRIMINAL APPEAL E019 OF 2024**

**KW KIARIE, J
JUNE 27, 2024**

BETWEEN

COLLINS OCHIENG AMISI APPELLANT

AND

REPUBLIC RESPONDENT

(From the original conviction and sentence in Criminal case No.26 of 2018 of the Senior Resident Magistrate's Court at Mbita by Hon. Nicodemus N. Moseti –Senior Resident Magistrate)

JUDGMENT

1. Collins Ochieng Amisi, the appellant herein, was convicted of grievous harm contrary to section 234 of the [Penal Code](#).
2. The particulars of the offence were that on the 3rd day of July 2020, at the Milimani village, Gembe location, Mbita Sub-county of Homa Bay County, wilfully and unlawfully did grievous harm to Geoffrey Odhiambo Omenda.
3. The appellant was sentenced to seven years' imprisonment. He has appealed against the sentence. He was in person. He raised the following grounds of appeal:
 - a. That the trial court handed the appellant a harsh sentence in the circumstances.
 - b. That the trial court did not consider the appellant's mitigation.
 - c. The appellant has a large family of three who were solely dependent on him.
4. The state opposed the appeal, arguing that, given the circumstances of this case, the sentence was legal and reasonable and that the maximum sentence provided by law was necessary.



5. This is the first appellate court. As expected, I analyzed and evaluated all the evidence before the lower court afresh, concluding while considering that I neither saw nor heard any of the witnesses. I will, therefore, be guided by the celebrated case of *Okeno v Republic* [1972] EA 32.
6. Section 234 of the *Penal Code* provides:

Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.
7. An appellate court would interfere with the trial court's sentence only where there exists, to a sufficient extent, circumstances entitling it to vary the trial court's order. These circumstances were well illustrated in the case of *Nillson v Republic* [1970] EA 599, as follows:

The principles upon which an appellate court will exercise its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence, and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in *James v Rex* (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor. To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. (*R v Shersbewsity* (1912) CCA 28 T.LR 364).
8. Geoffrey Odhiambo Omenda, the complainant, testified that the appellant went to his home, fetched a machete, and, upon his return, attempted to cut him on the head. He ducked and ran away. The appellant pursued him. He cut him on the hand and the knee when he caught up with him.
9. The medical evidence adduced by Rhoda Achieng Bona (PW3). Her evidence was that the complainant sustained the following injuries:
 - a. Deep cut wound damaging muscles, tendons, and nerves up to the bone;
 - b. Joint stiffness of the left index finger and the fifth finger;
 - c. Unable to use the left arm.
10. With these injuries, I am not persuaded that the sentence was harsh. The circumstances of the case militate against interference with the sentence. It is commensurate with the injuries inflicted.
11. The appeal is therefore dismissed.

DELIVERED AND SIGNED AT HOMA BAY ON THIS 27TH DAY OF JUNE 2024

KIARIE WAWERU KIARIE

JUDGE

