

KENYA / JUDGMENT

Kuno v Republic [2026] KEHC 13697 (KLR)

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COURT

High Court

BEFORE

FR Olel

CASE / FILE NUMBER

Criminal Appeal E011 of 2026

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Kuno v Republic (Criminal Appeal E011 of 2026) [2026] KEHC 13697 (KLR) (21 September 2026)
(Judgment) Neutral citation:

[2026] KEHC 13697 (KLR) Republic of Kenya In the High Court at Marsabit Criminal Appeal E011 of 2026 FR Olel, J September 21, 2026 Between Hassan Molu Kuno Appellant and Republic Respondent (Being an appeal arising from the conviction and sentence delivered on 02.03.2026 by Hon Edward Oboge (SRM) in Marsabit MCCR No E008 of 2026)

Judgment

A. Introduction 1. The Appellant was charged with the offence of Threatening to Kill contrary to Section 223(1) of the Penal Code. The particulars of the offence were that on the 3rd day of January 2026 at Nagayo Location in Marsabit Central Sub-County within Marsabit County, he intentionally and unlawfully threatened to kill Molu Kuno Sora while armed with a rungu and a knife. 2. The Appellant initially took plea on 6th January 2026 before Hon. Christine Wekesa (SPM) and pleaded not guilty to the charge. When the matter came up for hearing on 2nd March 2026 before Hon. Edward Oboge (SRM), the Appellant requested that the charge sheet be read to him again. The charge was read out to him in Kiswahili, a language he understood, and he responded, "Ni kweli" (It is true). The trial court then proceeded to enter a plea of guilty. 3. The Prosecutor then presented the facts of the case, stating that on 3rd January 2026, the complainant was at his home when the Appellant entered his miraa farm. Upon being asked to leave, the Appellant pursued the complainant while armed with a rungu and a knife. The complainant fled and reported the incident to the police. When asked by the court to respond to the facts read by the Prosecutor, the Appellant stated, "Ni kweli" (It is true). In mitigation, the Appellant prayed for leniency, stating, "Naomba msamaha" (I pray for forgiveness). 4. The Prosecutor requested for a custodial sentence, noting that the social inquiry report was unfavorable. The complainant, who is the Appellant's father, had expressed fear for his safety and prayed that the Appellant be jailed. 5. Having considered the social inquiry report and the sentiments of the complainant, the trial magistrate sentenced the Appellant to serve ten (10) years in prison. B. The Appeal 6. Being aggrieved by both the conviction and the sentence, the

appellant proceeded to lodge an appeal in which he set out on the following grounds: a. That the learned trial magistrate erred in matters of law and fact by failing to exercise caution or safeguards prior to basing conviction on the plea of guilty. b. That the consequence of pleading guilty to the charge was not explained to the Appellant. c. That the learned trial magistrate erred in law and fact in imposing a very harsh and excessive sentence without considering the Appellant's mitigation and the circumstances of the case. 7. The Appellant prayed that his appeal be allowed, the conviction quashed, the sentence set aside, and that he be set at liberty. C.

Analysis And Determination 8. As the court sits on a first appeal, it is obligated to undertake a fresh appraisal of the entire body of evidence and to render its own independent conclusions, mindful that it lacked the advantage of observing the witnesses directly. (See *Okeno v R* (1972) EA). 9. Section 348 of the Criminal Procedure Code (Cap 75) generally bars an appeal against conviction where an accused person has been convicted on his own plea of guilty. However, it is a well-settled principle of law that an appeal remains competent where it is demonstrated that the plea was equivocal, defective, or procedurally flawed. As such, the following issues arise for determination; a. Whether the Appellant's plea of guilty was unequivocal, valid, and properly recorded in law b. Whether the sentence passed should be interfered with.

- a. Whether the Appellant's plea of guilty was unequivocal, valid, and properly recorded in law
10. The procedure for the taking and recording of a plea is set out under Section 207(1) and (2) of the Criminal Procedure Code, which stipulates as follows: 1. The substance of the charge shall be stated to the accused person by the court, and he shall be asked whether he pleads not guilty, guilty or guilty subject to a plea agreement. 2. If the accused person admits the truth of the charge otherwise than by a plea agreement his admission shall be recorded as nearly as possible in the words used by him, and the court shall convict him and pass sentence upon or make an order against him, unless there appears to it sufficient cause to the contrary: Provided that after conviction and before passing sentence or making any order the court may permit or require the complainant to outline to the court the facts upon which the charge is founded. 11. Additionally, the basic procedure for taking a plea of guilty was established in the landmark case of *Adan v. Republic* [1973] EA 445 where the Court of Appeal of East Africa laid down the following guidelines: i. The charge and all the essential ingredients of the offence should be explained to the accused in his language or in a language which he understands; ii. The accused's own words should be recorded and, if they are an admission, a plea of guilty should be recorded; iii. The prosecution should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts, or to add any relevant facts; iv. If the accused does not agree the facts or raises any question of his guilt his reply must be recorded and change of plea entered; and v. If there is no change of plea a conviction should be recorded and a statement of facts relevant to sentence together with the accused's reply should be recorded. 12. The question before this court is simple was the plea equivocal or unequivocal given the circumstance and facts of this appeal? In the opinion of this court, it is clear that the appellant did fully understand and agree with the charge and particulars of the offence as read out and that is why he pleaded guilty. The charge sheet contained specific offence and had elaborate

particulars of the offence. After the plea of guilty was entered, the prosecution went ahead and did explain the facts to the appellant and he did admit they were true. 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.

- (b) Sentencing 13. As regards the sentence, this Court is guided by the principles in the Court of Appeal case of Bernard Kimani Gacheru vs. Republic [2002] eKLR where it was stated as follows: “ 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 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.” 14. The Court of Appeal in Thomas Mwamba Wanyi Vs Republic (2017) eKLR cited the decision of the Supreme Court of India in Alister Antony Pereira Vs The state of Maharastra at paragraph 70 – 71 where the court held; “ Sentencing is an important task in the matter of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate and proportionate sentences commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straight jacket formula for sentencing an accused person on proof of crime. The courts have evolved certain principles; twin objective of sentencing policy is deterrence and correction. What sentence would meet the end of justice depends on the facts and circumstance of each case and the courts must keep in mind the gravity of crime, motive for the crime, nature of the offence and all the attendant circumstances. The principle of proportionality by sentencing a crime done is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment must bear relevant influence in determining the sentence of the crime doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.” 15. The Social inquiry report revealed that the Appellant is a habitual offender since his teenage years and his behaviour has become worse due to drugs abuse. The family, and especially the complaint, who is his father too was not ready to forgive him as they had tried everything to try rehabilitate him, including relocating him to Moyale but all efforts had been in vain. 16. The sentence passed is statutorily provided for and when the same is Considering against the background circumstances herein, I do find that the sentence passed against the Appellant is not excessive, since his conduct merits a deterrent sentence. D. Disposition 17. The upshot, having considered the record of appeal and the applicable law, I do find that the Appeal against both conviction and sentence has no merit the same is dismissed. 18. Right of Appeal 14 days. 19. It is so ordered. JUDGMENT READ, SIGNED AND DELIVERED IN OPEN COURT AT MARSABIT THIS 21 ST DAY OF SEPTEMBER 2026. FRANCIS RAYOLA

OLEL JUDGE Delivered on the virtual platform, Teams this ...21 st Day of SEPTEMBER,
2026. In the presence of:- Appellant
.....For O.D.P.P Court Assistant

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Prepared on 29 October 2026 · Esheria