



REPUBLIC OF KENYA



KENYA LAW
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**Yongo v Republic (Criminal Appeal 101 of 2018)
[2023] KECA 1462 (KLR) (24 November 2023) (Judgment)**

Neutral citation: [2023] KECA 1462 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 101 OF 2018
PO KIAGE, F TUIYOTT & JM NGUGI, JJA
NOVEMBER 24, 2023**

BETWEEN

PAUL ODHIAMBO YONGO APPELLANT

AND

REPUBLIC RESPONDENT

*(An appeal from the judgment of the High Court of Kenya at Homabay
(H. A. Omondi, J.) dated 2nd February, 2017 in HCCRA No 21 of 2016)*

JUDGMENT

1. Our short answer to this appeal is that we have no jurisdiction to entertain or determine it.
2. The appeal is preferred by Paul Odhiambo Yongo alias Rali, who is currently serving a 20-year term of imprisonment imposed by the Resident Magistrate at Ndhiwa upon conviction for the offence of causing grievous harm contrary to section 234 of the *Penal Code*. It was alleged and proved that on the 11th day of March 2015, at Lower Kayambo Location in Nyando District of Homa Bay county, he did grievous harm to Peter Odhiambo Ogalo. We need not go into the evidence that was led in proof of the offence.
3. The appellant's first appeal to the High Court at Homa Bay was dismissed by H.A. Omondi, J. (as she then was) in a judgment delivered on February 2, 2017.
4. By a self-crafted memorandum of appeal dated May 10, 2023, the appellant's appeal is expressed as follows;

“The appeal is against sentence only and purposely in pursuant to sentence reduction and is grounded as follows;



1. That, both the trial and first appellate court erred in law by meting and upholding a sentence passed through unfair and unjust trial process.
2. That, both the trial and first appellate court erred in law by meting and confirming respectively a harsh sentence in view to the circumstances of the case.

Reasons wherefore the appellants' humble prayers are that;

1. The appeal be allowed,
 2. The harsh sentence of 20 years be set aside, and
 3. The sentence be reviewed and reduced.”
5. As we have already stated, this is a second of appeal and by express statutory debarment, we cannot entertain the appeal as presented. Section 361 of the [Criminal Procedure Code](#) is in these terms;
- “361 (1) A party to an appeal from a subordinate court may, subject to subsection (8), appeal against a decision of the High Court in its appellate jurisdiction on a matter of law, and the Court of Appeal shall not hear an appeal under this section—
- a. on a matter of fact, and severity of sentence is a matter of fact; or
 - b. against sentence, except where a sentence has been enhanced by the High Court, unless the subordinate court had no power under section 7 to pass that sentence.”
6. The legality of the sentence is not under challenge. Nor is it alleged that the High Court enhanced sentence. The appeal before us as stated in black and white is against severity of sentence, the very thing the Code deems a matter of fact, over which a second appellate court has no jurisdiction.
7. In the result, and without belabouring the point, this appeal is incompetent for purporting to invoke a jurisdiction this court is bereft of, and is accordingly struck out.

Order accordingly.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF NOVEMBER, 2023.

P. O. KIAGE

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JUDGE OF APPEAL

F. TUIYOTT

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JUDGE OF APPEAL

JOEL NGUGI

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JUDGE OF APPEAL

I certify that this is a true copy of the original.



DEPUTY REGISTRAR

