



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL APPEAL NO.23 OF 2020

EM.....APPELLANT

- V E R S U S -

REPUBLIC.....RESPONDENT

(Being an Appeal from the original conviction and sentence of Hon. E.W. KARANI (RM) in Kericho CMCR.

CASE No.533 of 2018 delivered on 27/4/2020)

JUDGMENT

1. The Appellant pleaded guilty to the charge of assault of a Police Officer in Execution of duty Contrary to Section 103 (a) of the National Police Service Act (NPSA) of 2011. He was convicted on his own plea of guilty and sentenced to Seven (7) years imprisonment.
2. The particulars of the charge were that on 27/2/2018 at about 00.00 Hrs at Mwembe Village in Sigowet Soin Sub-County within Kericho County, the Appellant assaulted No.55409 P.C. Mwamuleo Mzungu while he was executing a Warrant of Arrest against him thereby occasioning him actual bodily harm.
3. The Appellant was faced with a Second Count of deliberate transmission of life threatening sexually transmitted disease Contrary to Section 26 (1) (b) of the Sexual Offences Act (SOA) No.3 of 2006.
4. The Particulars were that in the same material circumstances as in Count 1 (above) the Appellant having actual knowledge that he was infected with H.I.V intentionally and willfully bit the right hand thumb of No.55409, P.C. Mwamuleo Muzungu which he knew or ought to have known was likely to infect P.C. Mwamuleo Muzungu with H.I.V.
5. The Appellant pleaded guilty to the first Count and the Second Count proceeded to full trial and he was acquitted Under Section 215 of the C.P.C. for reasons that the Trial Court was not sure of his H.I.V. Status.
6. The Appellant has now appealed against the sentence of Seven (7) years imposed upon him on the Count of Assault of a Police Officer on the following grounds:-
 - (i) THAT he is a first offender and the sole bread winner of his young family since his wife has no job and that he also provides for his extended family and further that his family is at risk of breaking as a result of exposure to insecurity and lack of fatherly care.
 - (ii) THAT he intends to undergo life skills training in a Polytechnic, a dream which now appears to have been shattered by imprisonment.
 - (iii) THAT he is seeking review of his sentence to a lesser sentence or a non-custodial sentence.
7. The parties filed written submissions in this appeal which I have duly considered. The Appellant submitted in writing that he was drunk at the time of his arrest and did not know what was happening.
8. The Appellant further submitted that he has caused pain to his family and the Complainant as a result of this unfortunate incident and further that his family needs his support in terms of maintenance and parental guidance to his son who was only 4 months old at the time he was arrested.
9. The Appellant said in his submissions that he has now reformed and seeks for a chance to take care of his family and his Elderly parents and also to reconstruct his life.

10. The Respondent opposed the appeal and submitted in writing that the Appellant was given a chance to give his mitigation before he was sentenced to Seven (7) years imprisonment and further the Court noted that he was not a first offender since he had been previously imprisoned for 6 months.

11. The Respondent further submitted that Section 103 of National Police Service Act provides that anyone who assaults a Police Officer in Execution of Duties is liable to a fine not Exceeding One Million Shillings or to imprisonment to a term not Exceeding Ten(10 Years or to both the fine and imprisonment.

12. This being a first appeal, it is the duty of this court to re-evaluate the evidence adduced before the Trial Court and to arrive at my own independent conclusion whether or not to support the findings of the Trial Court while bearing in mind that the Trial Court had the advantage of seeing the witnesses.

13. The Appellant pleaded guilty to the charge and he has no right of appeal except on the sentence only. Section **348** of the **Criminal Procedure Code** states that no appeal on plea of guilty

“shall be allowed in the case of an accused who has pleaded guilty and has been convicted on that plea by a subordinate court except as to the extent or legality of the sentence.”

14. The sentence imposed is lawful since the law prescribes a sentence of a fine not Exceeding One Million Shillings or a term of imprisonment not Exceeding Ten (10) Years or both.

15. The Trial Court took into account the fact that the Appellant pleaded guilty and saved the Court’s time and sentenced the Appellant to Seven (7) Years Imprisonment.

16. The Court also considered the mitigation by the Appellant before passing the sentence of Seven (7) Years Imprisonment.

17. However, this Court has considered that the Appellant admitted the offence and also the fact that he is remorseful and has learnt his lesson in the period that he had been in prison.

18. I have noted that the appellant has been in custody for three years since he was arrested and I think the period that the Appellant has been in prison is sufficient punishment for him. The Appellant has learnt that crime does not pay. This court is prepared to give him a second chance.

19. I reduce the sentence to 3 Years Imprisonment.

20. The sentence to start running from the time the Appellant was arraigned in Court on 1/3/2018.

Delivered, signed and dated at Kericho this 22nd day of January, 2021.

A. N. ONGERI

JUDGE