



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KABARNET**

**CRIMINAL APPEAL NO EO12 OF 2020**

**AKUPE KALALE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Being an appeal from the original sentence of Hon Biwott, SPM,**

**dated 19<sup>th</sup> November 2019 in Criminal Case No 747 of 2019**

**in the Senior Principal Magistrate's Court at Kabarnet.**

**Republic v Akupe Kalale)**

**JUDGMENT**

In his petition to this court the appellant has appealed against his sentence of four years' imprisonment in respect of the offence of grievous harm contrary to section 234 of the Penal Code (Cap 63) Laws of Kenya.

In his petition to this court, the appellant has raised the following grounds. He is a first offender, being the first ground. That he was in remand for two months, which was not considered, being ground 2. And that the victim has forgiven him, being ground 3. He also has stated that while in prison, he has reformed himself and decided to follow the word of God, being ground 4. He has urged the court to reduce the sentence or in the alternative to impose a non-custodial sentence, being ground 5.

In sentencing the appellant, the trial court took the following matters into account. The appellant was a first offender and was remorseful. The court also took into account that the attack upon the victim was beastly and was disrespectful to his father, who was the victim.

As a first appeal court, I am required to re-assess the sentence imposed by the trial court and make my own independent conclusions.

I have re-assessed the sentence imposed in the light of the applicable principles of law. I find that the trial court failed to take into account the period the appellant had been in custody. He had been in pre-trial custody from 26/9/2019 to 19/11/2019, which translated to a period of one month and three weeks; which the trial court was mandatorily required by section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya, to take into account in sentencing the appellant. Even if the appellant had been in custody for only one day, the court is under a statutory obligation to take that one day into account.

The appellant inflicted the following injuries on his father. A deep cut wound in the head, as result of which he became slightly unconscious. A closed fracture in the left arm.

After re-assessing the notes on sentence; notwithstanding the above error that the trial court committed. I find that the trial court imposed a proper sentence upon the appellant. I find no basis of interfering with the sentencing discretion of the trial court.

In the premises, the appellant's appeal fails and is hereby dismissed in its entirety.

**Judgment dated, signed and delivered in open court at Kabarnet this 11<sup>th</sup> day of February 2021.**

**J M BWONWONG'A**

**JUDGE**

**In the presence of:**

Mr. Kemboi Court Assistant.

Appellant present in person.

Mr. Abwajo for the Respondent.