



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

CRIMINAL PETITION NO 57 OF 2020

ALLOYS WAMEYO OHARE.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

INTRODUCTION

1. The Petitioner herein was tried and convicted of the offence of grievous harm contrary to Section 234 of the Penal Code and on 7th September 2017 and was sentenced to seven (7) years imprisonment.
2. Being dissatisfied with the said decision, the Petitioner lodged an Appeal, **Kisumu High Court Criminal Appeal No 48 of 2017**. However, the same was dismissed and his conviction and sentence affirmed.
3. On 13th August 2020, he filed an application for review of the sentence. His application was supported by his Affidavit in which he stated that he was petitioning for resentencing and that it was in the interest of justice that his Petition be heard and an independent conclusion reached.
4. He pleaded that he was fifty five (55) years old and a first offender. He added that he has been in prison for three (3) years and has since reformed. He further pleaded that his health status was deteriorating due to his incarceration and urged this court to reduce the seven (7) years that was imposed on him to enable him join his family which was currently unable to meet its basic needs.
5. On its part, the State opposed the Petitioner's application for review of the sentence and pointed out that the sentence imposed by the Learned Trial Magistrate was lawful and not harsh as it is commensurate to the offence committed. It added that the Learned Trial Magistrate considered his mitigation, the penalty that the offence attracts and the fact that the Complainant suffered serious injuries. It relied on the case of **Ambani vs Republic (1990) KLR 161** where it was held that the sentence to be imposed had to be commensurate with the moral blameworthiness of an offender.
6. It was its further submission that the three (3) years imprisonment that he had already served was not enough time for him to have undergone rehabilitation. It urged this court to dismiss his Petition and uphold the sentence.
7. This court considered the proceedings and Judgement of the Trial Court and noted that the crime perpetrated by the Petitioner was gruesome. He met the Complainant along a path to his home, hit him and cut him with a panga on the mouth and hand. During trial, the Learned Trial Magistrate noted visible scars on the Complainant's left side of the face and right hand. The offence was so pre-meditated and malicious as the Petitioner waylaid the Complainant armed with a panga.
8. Having said so, whether deterrence, public protection or reformation was the objective, courts are called upon to have regard to the nature and circumstances of the offence, the offender, the victim and the public interest. In simple terms, courts look at the aggravating and the mitigating factors of the offence as well as that of the offender. The sentencing court must therefore weigh the two and come to an informed conclusion as to the type of sentence to impose.
9. A perusal of the Petitioner's affidavit in support of his application showed that whereas he had contended that he had reformed, he did not adduce any documentary evidence of rehabilitation programmes that he may have undergone while in prison. He did not also show if he had acquired skills that would assist him once he left prison. In the absence of a recommendation letter from the Officer In-charge of the Prison to prove that he had reformed, this court entertained doubts as to whether he was suitable to be considered for a reduction of his sentence. Indeed, ill health of a convicted person and his family's inability to cater for its needs is not sufficient reason for his sentence to be reduced

and/or for him to be released before he completes his prison.

10. As the State correctly pointed out, any person who is convicted of the offence of causing grievous harm is liable to life imprisonment. Indeed, Section 234 of the Penal Code Cap 63 of the Laws of Kenya provides that:-

“Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”

11. This court therefore agreed with the State that the Learned Trial Magistrate exercised his discretion judiciously and was reasonable in having sentenced the Petitioner to seven (7) years imprisonment.

DISPOSITION

12. For the foregoing reasons, the court found that the Petitioner’s Petition for review of the sentence that was filed on 13th August 2020 was not merited and the same be and is hereby dismissed.

13. Accordingly, the court upholds the Petitioner’s conviction and sentence for the offence of grievous harm contrary to Section 234 of the Penal Code.

14. It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF JUNE 2021

J. KAMAU

JUDGE