



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

CRIMINAL APPEAL NO. E003 OF 2020

BENARD OMONDI MAENDE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in Criminal case No.166 of 2018 of the

Principal Magistrate's Court at Mbita by Hon. Jacinta A. Owiti–Senior Principal Magistrate)

JUDGMENT

1. Benard Omondi Maende, the appellant herein, was convicted for the offence of grievous harm contrary to section 234 of the Penal Code.
2. The particulars of the offence were that on the 7th day of April, 2018 at Koguna village, Suba North Sub-County within Homa Bay County, unlawfully did grievous harm to Joseph Oduor Otieno by inflicting a deep cut wound on the head.
3. The appellant was sentenced to serve 5 years imprisonment. He has appealed against sentence.
4. The appellant was in person. He raised six grounds of appeal which can be summarised as follows:
 - a) That the learned trial magistrate erred in law and in fact by not considering his mental status at the time of the offence.
 - b) That the learned trial magistrate erred in law and in fact by failing to appreciate his mitigation.
5. The appeal was opposed by the state through Mr. Ochengo, learned counsel.
6. This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **Okeno vs. Republic [1972] EA 32**.
7. There was no evidence on the mental status of the appellant that was adduced. The learned trial magistrate cannot therefore be accused of failing to factor in such evidence.
8. Before the sentencing, the trial court clearly indicated that she had considered the mitigation of the appellant.
9. The appellant was a first offender and I am persuaded to interfere with the sentence of the learned trial magistrate. I set aside the sentence of five years imprisonment and substitute it with a sentence of three years imprisonment. The sentence will run from when the appellant was sentenced by the trial court.

DELIVERED AND SIGNED AT HOMA BAY THIS 19TH DAY OF OCTOBER, 2021

KIARIE WAWERU KIARIE

JUDGE