



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KABARNET**

**CRIMINAL APPEAL NO 157 OF 2017**

**JOHN MBUGUA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**[An appeal from the original sentence and conviction criminal case no 752 of 2013 in the Principal Magistrate's Court at Eldama Ravine delivered on the 6<sup>th</sup> day of July, 2015 by Hon. R.Yator SRM]**

**RULING**

1. The Probation Office, Baringo, has requested the court to discharge the appellant of his obligation to pay a sum of Ksh.100,000/- in terms of order no. 2 of the Judgment of the court of 10<sup>th</sup> December 2018 following his successful completion of his probation sentence on the 9<sup>th</sup> December 2019 and the complainant agreeing to accept a lesser sum of Ksh.20,000/- in full settlement.

2. On the appellant's appeal from his conviction for grievous harm c/s 234 of the Penal Code and sentence of imprisonment for ten (10) years, the appellant was on recommendation of the Probation Office placed on probation pursuant to orders in the Judgment of the Court on appeal delivered on 10<sup>th</sup> December 2018 as follows:

**1. In accordance with section 354 (3) (b) of the Criminal Procedure Code, the Court, while affirming the conviction of the appellant for the offence of grievous harm alters the nature of the sentence so that the appellant, in addition to the imprisonment for over three years and 4 months already served, is placed on Probation for a period of 12 months from today.**

**2. The appellant shall also pay to the complainant the sum of Ksh.100,000/= which the court finds, in the circumstances of the case, to be suitable compensation in terms of section 175(2) of the Criminal Procedure Code.**

3. Reporting on the compliance with the second order of the Judgment, the Probation Office, Baringo filed a **Probation Officer's report on Compensation Status I.R.O. John Mbugua** dated 4<sup>th</sup> December 2019 and recommended as follows:

**"Recommendation**

*Considering that the two families have reconciled and agreed on the issue of compensation with no animosity existing among them coupled with the fact that the probationer has complied with the order throughout the period of supervision, the probationer may be discharged. This is however subject to the discretion of this honourable court*

Kiprono M. K.

Probation Officer

Baringo County 04/12/2019."

4. The minor complainant's auntie, Alice Moraa, appeared before the court on 26<sup>th</sup> February 2010 and confirmed on oath her receipt of the sum of Ksh.20,000/- from the appellant and her acceptance thereof, on instructions of the minor's deceased mother, in full and final settlement of their claim and further confirmed the family had no further claim against the appellant. The DPP did not object to the review of the order for compensation as proposed by the Probation Office.

**Orders**

5. For the reasons set out above, the court makes the following orders:

(1) The appellant is discharged from the liability to pay compensation of **Ksh.100,000/-**, as previously ordered in the second limb of the Judgment of the Court made on 10<sup>th</sup> December 2018, the complainant having acknowledged receipt and acceptance of the sum of **Ksh.20,000/-** in full and final settlement thereof.

(2) This court file is closed.

*Order accordingly.*

**DATED AND DELIVERED THIS 9<sup>TH</sup> DAY OF MARCH, 2020.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Appellant in person.

Ms. Isabella Tengekyon, Probation Officer.

Ms. Muriu, Prosecution Counsel for DPP.