



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MARSABIT

CRIMINAL APPEAL NO.24 OF 2019

JUMA ALIAPPELLANT

VERSUS

REPUBLIC..... RESPONDENT

(Being an Appeal from the original conviction and Sentence of Hon. C.A OMBIJA Resident Magistrate Marsabit in Cr. Case No.33 of 2019)

J U D G M E N T

The appellant was charged with the offence of assault causing actual bodily harm Contrary to Section 251 of the Penal Code. The particulars of the offence are that the appellant on the 10th day of January, 2019 at Shauri, Yako Marsabit Central Sub County, unlawfully assaulted Hassan Ali Abdi thereby occasioning him actual bodily harm.

The appellant pleaded guilty to the charge and was convicted on his own plea of guilty and sentenced to serve five (5) years imprisonment. The grounds of appeal are:-

- 1. That the appellant was arrested charged and convicted in an offence of assault causing actual bodily harm contrary to section 251 of the Penal Code and sentenced to 5 years imprisonment at Marsabit Law Court vide criminal case No.33/2019 dated 19.2.2019 by Mr. Collins Ombija (RM).**
- 2. That the appellant pleaded guilty of the charge against him and seek mercy and promise never to repeat again.**
- 3. That the appellant is serving sentence without fine and it is too harsh and excessive.**
- 4. That the appellant's parents are ready to forgive him because they need him and he is ready to integrate with them and support in all means possible.**
- 5. That the appellant has promised never to repeat the same mistake again and is humbly begging the honourable Court to set aside the five (5) years imprisonment and set him at liberty or probation term because the family is ready to receive him.**

The appellant relied on his grounds of appeal. The appellant is seeking to have the sentence reduced as it is harsh and excessive. The complainant is his brother and he has forgiven him. The complainant swore an affidavit on 5th February, 2020 stating that he would wish to have the sentence of five (5) years imprisonment set aside and the appellant set at liberty. The affidavit further indicate that the two are brothers and have reconciled. The accused has promised never to repeat the same mistake again. The complainant appeared before me on 11.03.2020 and reiterated the contents of the affidavit.

Mr. Ochieng learned prosecution council did not object to the complainant's plea that the appellant be set at liberty.

The record of the trial Court contains a probation officer's report dated 19.2.2019. The report states that the appellant is not married. He smokes bhang and abuses other substances. He harasses his family members including their mother. He has been imprisoned several times for assault related offences involving family members. I believe that is the reason why the trial court imposed the five (5) years custodial sentence.

The facts of the case are that the appellant on the material day arrived home while drunk. He hit the complainant with a stone on the head. The complainant sustained injuries to the scalp and bruises to the shoulder. The injuries were categorized as harm.

In view of the fact that the complainant has reconciled with the appellant and considering that the appellant pleaded guilty to the charge and saved judicial time, I do find that the five years imprisonment sentence is quite excessive. The appellant was arrested on 14.1.2019 and sentenced on 19.2.2019. He has served over one (1) year imprisonment sentence. The appeal is not on conviction but on sentence.

Given the circumstances of the case, the five (5) years imprisonment sentence is hereby set aside and replaced with the period already served. The appellant shall be set at liberty unless otherwise lawfully held.

Dated, signed and delivered at Marsabit this 15th day of June 2020.

S. CHITEMBWE

JUDGE