



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

HIGH COURT CRIMINAL APPEAL NO. 24 OF 2019

SILAS MUGO NJERU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. A brief outline of the case was that the appellant, **Silas Mugo Njeru** was charged with the offence of Grievous Harm contrary to Section 234 of the Penal Code; the particulars of the offence are that on the 23rd December, 2015 at Kivue Village, Mumiji Location in Mbeere North Sub-County within Embu County jointly with others not before court intentionally and unlawfully did grievous harm to **Boniface Muriithi**;

2. The appellant was convicted and sentenced to serve a term of ten (10) years imprisonment; being aggrieved with the sentence, the applicant filed this instant appeal against conviction and sentence and listed eight (8) grounds of appeal; the appellant later abandoned the appeal on conviction and elected to proceed only on the appeal on sentence; his ground of appeal is summarized hereunder;

(i) The sentence imposed upon him was harsh and excessive considering that he was a first offender;

3. At the hearing hereof the applicant was unrepresented whereas the respondent was represented by Prosecuting Counsel for the State Ms. Chemenjo and both parties made oral submissions; hereunder are the parties' respective submissions;

APPELLANT'S CASE

4. The appellant lamented that the sentence imposed is hard and excessive considering that in mitigation, the appellant indicated that he was unaware of the consequences of the offence and that he was a first offender; he is also remorseful and therefore urged this court to substitute the 10 years sentence with a lesser one; he is entitled to a lesser sentence as a first offender under Articles 27(1)(2)(4) and 50 (2)(p) of the Constitution;

5. The Trial court failed to exercise its discretion on sentencing as required by law; it only proceeded to impose the minimum mandatory sentence for the offence contrary to the Supreme Court decision in the Muruatetu's case; such failure to exercise discretion means that the appellant's mitigation was not considered; this prejudiced the appellant and hence the resultant sentence was harsh and excessive; the appellant relied on **Christopher Ochieng v Republic[2018]eKLR** and **Jared Koita Njiri v Republic Kisumu Criminal Appeal No.93 of 2014**;

RESPONDENT'S CASE

6. In response counsel was opposed to the appeal and stated that the sentence for the offence committed is life sentence and therefore the 10 years imprisonment imposed is lenient; there were also aggravating factors as the attack was unprovoked; the injuries suffered by the complainant were main, grievous and life-long;

7. The respondent prayed that the appeal be dismissed as it was not merited.

ISSUES FOR DETERMINATION

8. After hearing the submissions of both parties this court has framed only one issue for determination;

(i) Whether the trial court erred in imposing the term of ten (10) years imprisonment;

ANALYSIS

Whether the trial court erred in imposing the term of ten(10) years imprisonment

9. In this instance the trial court after conducting a full hearing found that there was overwhelming evidence that the appellant acting jointly and in concert with another assaulted the complainant; the trial court also made a finding that the injuries sustained by the complainant were indeed very serious injuries to the health of the complainant and classified them as 'maim' harm; the appellant was then found guilty, convicted and then sentenced to the term of ten (10) years imprisonment.

10. The sentence meted by the trial court was a term of ten (10) years imprisonment; and the appellant's contention was that the sentence imposed was harsh, oppressive and excessive;

11. The scope of this court's appellate powers are to examine the evidence on record so as to satisfy itself as to the propriety and legality of the sentence and that it has been made in accordance with the law; the applicable section in this instance is found at Section 234 of the Penal Code; which section reads as follows;

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

12. The maximum sentence provided by the above section is life imprisonment; the record reflects that the trial court invited the appellant to mitigation and took into consideration the fact that the appellant was a first offender and this factor was confirmed by the prosecution; the trial court also considered the savage nature with which the appellant committed the offence; it is therefore evident that the trial court took into account the provisions of the law when passing sentence;

13. In this instance the appellant has not demonstrated that the trial court erred in imposing the term of ten (10) years imprisonment or committed any illegality, impropriety or mistake when sentencing him; the court record reflects that the trial court did not overlook any material factor when passing sentence and took into consideration the circumstances of the case and the same mitigating factors brought out by the appellant when invited to mitigate; the record reflects that the trial court took into consideration the fact that the applicant was a first time offender and that he was remorseful; the sentence is as provided by the law and is found to be legal and that there is no reason found that warrants interference with it as maximum prescribed by law is a life sentence;

14. This court has taken into consideration the aggravating and mitigating factors and the circumstances of the case; the aggravating factors are that the attack was unprovoked and the degree of the injuries inflicted upon the complainant which were indeed very serious and life-long;

15. This court is satisfied that when imposing the sentence the trial court correctly exercised its discretion and meted out an appropriate sentence;

16. The sentence is found to be legal and as provided by the law and this court finds that the sentence imposed was in the circumstances not manifestly harsh and excessive and it therefore does not warrant interference by this court; Refer to the case of **Wanjema v Republic (1971) EA 493**;

17. For the forgoing reasons this court is satisfied that this ground of appeal has no merit and it is hereby dis-allowed;

FINDINGS AND DETERMINATION

18. For the foregoing reasons this court makes the following findings and determinations;

(i) The appeal is found lacking in merit in its entirety and it is hereby dismissed.

(ii) The court finds that the trial court did not err in imposing the custodial term of ten (10) years imprisonment; and finds no good reason that warrants the interference with the sentence imposed which is found to be legal;

(iii) The sentence imposed is hereby affirmed; to run from date of arrest, 2/01/2016.

Orders accordingly.

Dated, Signed and Delivered Electronically at Nyeri this 29th day of October, 2020.

HON. LADY JUSTICE A. MSHILA

JUDGE