



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NO. 72 OF 2017

(CORAM: R. E. ABURILI - J.)

GEORGE OMONDI ORUKOAPPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Appeal against both the conviction and sentence dated 26.7.2017 in Siaya PM Cr. Case No 634 of 2015, Hon. J.O.Ongondo)

JUDGMENT

1. This appeal arises from the judgment, conviction and sentence of 13 years imprisonment meted out on the appellant **George Omondi Oruko** on 26.7.2017 by Hon. O. Ongondo, Principal Magistrate in Siaya P.M's Court Criminal Case No. 634 of 2015, **Republic Vs. George Omondi Oruko**.
2. In the said case the appellant herein was charged with the offence of **Grievous Harm contrary to Section 234 of the Penal Code**.
3. It was alleged that on the 8th day of August, 2015 at Luala village in Siaya District within Siaya County, he willfully and unlawfully did grievous harm to Millicent Akoth Oreyu by cutting her with a panga on the left leg.
4. The Appellant pleaded not guilty to the charge. He was tried and found guilty of the offence and after mitigation, he was sentenced to serve 13 years imprisonment.
5. In his mitigation he stated that he had been in custody from November 2015 and prayed for a non-custodial sentence.
6. The trial Court in sentencing the convict also considered the fact that he was a first offender but observed that the offence was serious and that the victim lady lost 2 teeth and suffered a huge cut wound on her leg hence a deterrent sentence was called for.
7. The applicant/convict has not challenged his conviction and sentence by way of an appeal which he withdrew on 26.11.2018. He only seeks for sentence review. He urges this Court to review the sentence of 13 years imprisonment.
8. He claims he was arrested on 15.11.2015, he had children, he was the only son and that his mother is no longer at home, because she died.
9. That he was married with two children. That the complainant was his wife and that she left him home and he does not know where she is. That they had domestic problems. He went out, she followed him asking him to go home, they disagreed.
10. He was a motor-cycle driver, he has learnt that anger does not pay and that there are other means of resolving disputes. That she came with one child into the marriage and they sired one child together.
11. In opposing the convict's plea for sentence review, the prosecution counsel Mr. Okachi submitted that the offence is serious and prevalent in this region and that there was no evidence that the convict had learnt his lessons or that he was remorseful.
12. That the convict acted without provocation to maim the victim. That the evidence before the trial court which convicted the convict describes him as barbaric hence he does not deserve any mercy as the maximum sentence is life imprisonment hence the sentence of 13 years in prison was lenient.
13. After hearing the above arguments this Court ordered for a Probation Sentence Review Report and on 27.11.2018 the Probation Officer noted the file but to date no such report has been filed.

14. Accordingly, I shall deliberate this matter on the basis of the Court records.
15. The conviction of the applicant is not challenged hence I shall not delve into its soundness.
16. On sentence, it is not in dispute that a conviction for grievous harm attracts a maximum of life imprisonment. Accordingly, 13 years imprisonment is not a harsh or excessive sentence. It is lawful.
17. The trial court who had the opportunity to hear the complainant and the convict on the circumstances surrounding the commission of the offence observed the demeanor of the witnesses and believed that the victim suffered serious injuries occasioned by the convict who was her husband.
18. Albeit the convict claims that there was domestic disagreement with his wife the victim, what emerges from her testimony is that the convict was found by his wife assaulting another man and when she asked him to stop assaulting him, the convict turned onto his wife and mercilessly assaulted her after pulling her down for over 100 metres, taking off her clothes, on a public road and after chasing away anybody who tried to intervene to save her.
19. He pulled her upto his gate, went and picked a slasher and a panga which he used to cut her leg and poured hot water on the wound.
20. The P3 form filled by PW2 Jared Obiero Opondo shows that the victim had multiple cuts on her head, two upper teeth one incisor and canine extracted, scars, bruises on her back, tenderness on her chest, healed scars on the right finger and hands, septic wound on her right leg with foul smell and discharge. The treatment notes produced in evidence at the time of the trial reveal that the victim had not healed from the injuries sustained during the assault.
21. In his defence the convict claims he went to buy airtime and on returning home he met 3 people in civilian who stopped him and told him if he was George then they were looking for him. They arrested him and charged him with the offence. He denied committing the offence.
22. The question is, at what time did the convict become remorseful for subjecting his wife to such barbaric, merciless assault that threatened her life and limb?
23. I have considered the plea for sentence reduction and I am not persuaded that the convict herein George Omondi Oruko deserves the orders sought.
24. In my humble view, the convict who denied committing the offence throughout the trial only realized his fault after he was convicted and sentenced to a prison term.
25. Nothing else paints him as a remorseful human being who had no mercy for a defenseless wife. He cannot be heard to claim that he is the only child and that his mother died and that he has 2 children and he does not know where his wife went, yet the offence committed borders on attempted murder.
26. In my humble view, no desperate woman should live with such a wild animal type of human being as the convict herein who has no respect for life and limb.
27. He did not value the victim's life. He called his mother and told her to tell the victim to join him at Boro Centre only for him to maim her by pulling her on the ground, assaulting her with slaps and cutting her with a panga, tearing her clothes and poured hot water on her. He wanted her dead. He never bothered to take her to hospital. She was left helpless.
28. I find the sentence meted out lenient. He deserved a more deterrent sentence than 13 years imprisonment.
29. In the end, I find no merit in the prayer for sentence reduction. The appeal against sentence is hereby dismissed.
30. The appellant to serve the sentence as meted out.

Dated, Signed and Delivered at Siaya this 23th Day of January 2019.

R.E. ABURILI

JUDGE

In the presence of:

The appellant in person.

Mr. Okachi Prosecution Counsel for the Respondent.

CA: Brenda.