



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO 24 OF 2018**

**MICHAEL KIMONDO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***(Appeal from original Conviction and Sentence dated 24/05/2018 in Nanyuki CM Criminal Case No 847 of 2017 – L Mutai, CM)***

**J U D G M E N T**

1. The Appellant in this appeal, **MICHAEL KIMONDO**, was convicted after trial of **grievous harm** contrary to **section 234** of the **Penal Code**. It was alleged in the particulars of the offence that on 17/09/2014 in Naromoru Township in Nyeri County, he unlawfully did grievous harm to one David Kamau Njuguna. On 24/05/2018 he was sentenced to serve four (4) years imprisonment. He appealed against both conviction and sentence; however, in the course of hearing of the appeal, the Appellant through his learned counsel abandoned the appeal against conviction and proceeded only with the appeal against sentence.

2. I have considered the submissions of the learned counsels appearing. I have also read through the record of the trial court.

3. The circumstances of the commission of the offence as disclosed by the evidenced tendered before the trial court were as follows. The Appellant returned home unexpectedly one morning (having left to go work) and found his wife and the complainant in his own house (and apparently in his own bed) in a very compromising situation. In a rage he attacked both of them with a knife and inflicted upon the complainant injuries that amounted to grievous harm and upon his wife injuries that amounted to assault causing actual bodily harm. The injuries upon the wife formed the basis of a second charge against him which the wife subsequently withdrew after they reconciled.

4. It is only a very foolish man who would enter another man's house and bed with that other man's wife, and such man would ordinarily be deserving of whatever might come to him, including grievous harm or even death, because such foolish action would amount to a very grave provocation to the man cuckolded! However, we live in civilised society, and people must always control themselves and not take the law into their own hands, because if everybody were allowed to do that, then we would be living in a jungle and life would probably be brutish and short as some philosopher said.

5. But in punishing an offender such as the Appellant, the court must always bear in mind the grave provocation which few men can withstand and hold peace.

6. I consider that the sentence of 4 years imprisonment meted out to the Appellant was manifestly harsh and excessive, bearing in mind the circumstances in which the offence was committed in this case. A much shorter term of imprisonment would have served the ends of justice.

7. In the circumstances, I will partially allow the Appellant's appeal against sentence by setting aside the term of 4 years imprisonment and substituting therefor a term of imprisonment of **13 months** from the date of his sentencing by the trial court – that is, 24/05/2018. That means that the Appellant has now fully served his sentence of 13 months imprisonment and he should be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

**DATED AND SIGNED AT NANYUKI THIS 26<sup>th</sup> DAY OF JUNE 2019**

**H P G WAWERU**

**JUDGE**

**DELIVERED AT NANYUKI THIS 27<sup>TH</sup> DAY OF JUNE 2019**