



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCRA NO. 92 OF 2019

RUTH MUMO MULI.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(From the original Judgment before Hon. E. M. Muiru (SRM) in Kilungu

Senior Resident Magistrate's Court Criminal Case No. 692 of 2018

delivered on 12th day of April, 2019).

JUDGMENT

1. **Ruth Mumo Muli** was charged and convicted of the offence of causing grievous harm contrary to Section 234 of the Penal Code. Upon conviction after a full hearing, she was sentenced to serve five years' imprisonment on 12th April, 2019.
2. She appealed against the judgment of the trial court. When the appeal came for directions she said she was ready to orally argue her appeal. She also abandoned her appeal against conviction and only pursued the one against sentence.
3. In her submissions, the Appellant said she is remorseful for what she did. She contended that she is a mother of small children the youngest being aged two (2) years and eight (8) months. She also informed the court that she is expectant and had a problem eating the food at the prison.
4. Mrs. Owenga conceded to the appeal on the main ground of the Appellant's heavy pregnancy. She urged the court to consider a non-custodial sentence for her.
5. The record shows that the injuries suffered by the complainant who is related to the Appellant were: -
 - **Chest injury**
 - **Swelling on left breast**
 - **Swollen right hand**
 - **Fracture near the small finger**
 - **Bruises on left leg**
6. The evidence clearly reveals the leading role the Appellant played in assaulting the complainant. The sentence of five (5) years in the circumstances cannot be said to be harsh.
7. The only thing that will make this court interfere with her sentence of five (5) years imprisonment is her present condition. She is heavily pregnant with child. This is an innocent creature of God who should not be made to suffer because of the Appellant's sins.
8. On that ground alone, I hereby set aside the sentence of five (5) years imprisonment and substitute it with an order discharging the

Appellant under Section 35(1) Penal Code on condition that she does not commit any offence within three years (36 months).

9. The condition is clearly explained to her.

Orders accordingly.

DELIVERED, SIGNED & DATED THIS 25TH DAY OF JULY 2019, IN OPEN COURT AT MAKUENI.

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H. I. ONG'UDI

JUDGE