



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 72 OF 2017**

**ROBERT MANDERA MOKAYA.....APPELLANT**

**VERSUS**

**THE REPUBLIC.....ACCUSED**

**{Being an appeal against the Conviction and Sentence of Hon. J. Mwaniki – PM Keroka delivered on the 19<sup>th</sup> day of December 2016 in the original Keroka Principal Magistrate’s Court Criminal Case No. 573 of 2012}**

**JUDGEMENT**

This appeal is against the sentence of six (6) years imprisonment imposed upon the appellant after the trial court found him guilty of and convicted him for grievous harm contrary to Section 234 of the Penal Code upon a full trial.

The gist of his appeal is that he was the sole breadwinner of his family; that the sentence is overly long hence bound to affect his family; that the sentence is oppressive and life in prison is unbearable and that he promises to be a good citizen.

Miss Okok, Learned Prosecution Counsel opposed the appeal and submitted that the injuries inflicted upon the complainant by the appellant caused him to be a stammer and eventually loss of memory and that therefore the sentence imposed was not excessive.

The principle that guides this court in appeals against sentence is that: -

**“An appellate court is not entitled to alter sentence on appeal unless convinced that the trial court erred in principle in imposing sentence; that the sentence was so manifestly harsh or excessive that it was evident that the trial court erred.” – *Amolo Vs Republic [1991] KLR 392 at 393.***

The appellant assaulted the complainant using a panga and inflicted upon him injuries which caused him to become a stammerer for good. He also suffered loss of memory. The trial court found that there was no evidence that the appellant acted in self-defence and that he used excessive force against the complainant. My own evaluation of the evidence before the trial court leads me to the conclusion that it is indeed true that the appellant was the aggressor having waylaid the complainant with a panga. There appears to have been some disagreement involving alcohol/liquor between them. The accused has himself not challenged the conviction and I find that the sentence imposed was just in the circumstances of this case and as it is not excessive there is no good reason to interfere with it. The appeal is dismissed.

**Signed, dated and delivered at Nyamira this 25<sup>th</sup> day of July 2019.**

**E. N. MAINA**

**JUDGE**