



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUNGOMA

CRIMINAL APPEAL NO. 119 OF 2018

RASHID BENYEA WANYONYI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being case No. 277 of 2018 of the Senior Principal Magistrate's Court at Kimilili)

J U D G M E N T

The Appellant has appealed against his sentence of six (6) years imprisonment in respect of the offence of grievous harm contrary to **section 234 of Penal Code (Cap 63) Laws of Kenya**.

The state has supported the sentence.

In this court the appellant has raised four (4) grounds of appeal.

In ground 1, he has stated that he is a 1st offender, which is an unchallengeable fact.

In ground 2, he has stated that he is remorseful.

In ground 3 he has stated that the sentence imposed upon him is harsh and unsafe. In ground 4, he has drawn the attention of court that he should be given copies of the proceedings to enable him adduce more grounds during the hearing of his appeal.

It is clear from the foregoing that the appeal is only against sentence. In his written submissions in this court he has repeated the same matters that he raised in his grounds of appeal. However, he has added the following matters. He has stated that the matter arose out of misunderstanding that was to be resolved under customary law, but the investigating officer did not give him proper direction. He has also stated that he has now reformed and has asked for forgiveness.

Furthermore, the appellant has stated that he is the sole bread winner of his family and he supports ten (10) member of his family including paying for their school fees. All these matters were in support of his mitigation.

The aggravating factors include the following. The appellant caused permanent injuries to his wife who lost one tooth and another one was broken. Additionally, the right eye of the complainant has permanently been injured. Finally, he attacked his wife with kicks and blows and continued to assault her, when she was lying down.

In his notes on sentence, the trial court has not taken into account that the appellant was a first offender.

After taking into account the mitigating and aggravating factors, I find that the sentence imposed was manifestly excessive. I therefore reduce it to three (3) years imprisonment which now the appellant has to serve.

Judgment signed, dated and delivered at Bungoma this 9th day of August, 2019 in the presence of the appellant and Ms Nyakibia for the Respondent.

J. M. Bwonwong'a.

J U D G E

9th August, 2019.