



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCRA NO.78 OF 2019

JULIUS NZOMO DAUDI..... APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(From the original conviction and sentence before Hon. Mwaniki J. (SPM) in Makueni Senior Principal Magistrate's Court Criminal Case No. 359 of 2018 delivered on 8th day of August, 2018).

JUDGMENT

1. **Julius Nzomo Daudi**, the Appellant herein was charged and convicted of the offence of grievous harm contrary to Section 234 of the Penal Code. The particulars were that the Appellant on the **30th day of July 2018**, at 1700hrs at Kyaaka village, Kitonyoni sub-location, Muvau location of Makueni sub-county in Makueni county unlawfully did grievous harm to **Winfred Mwende**.

2. He was first arraigned in court on **3rd August 2018**, when the charge was read to him and he pleaded guilty to the charge. Facts were read to him and he confirmed they were correct. He was then convicted. I have perused the record and I am satisfied that the plea was unequivocal.

3. The Appellant is not challenging the conviction but the sentence. He says the sentence is too harsh for him as he is the bread winner of his family of two wives and seven children.

He is praying for a non-custodial sentence so that he can take care of his family. He claims to have no problem with the complainant (**his wife**) whom he loves so much.

4. The appeal is strongly opposed by the State. Mrs. Owenga submitted that this is not a matter where this court can interfere with sentence owing to the injury suffered by the complainant. Counsel submitted that a pre-sentence report had been called for by the trial court and it had been found to be a very bad one. She urged the court to look at it and dismiss the appeal. She however suggested that the court calls for another probation report for consideration.

5. This court called for a detailed probation report. The county probation officer filed the same on **5th July, 2019**.

6. First of all, the injuries suffered by the complainant as per the P3 form are: **severe head injury with a cut, injuries on the face (right eye)**. She also **suffered emotional trauma** and has had to undergo psychological counselling.

7. The Appellant has told this court that he wants to be given a non-custodial sentence so that he can go and take care of this wife he loves so much plus the children. This incident did not take place in the safety of the Appellant's home or house. It was at a grazing field and in spite of pleas from members of the public asking the Appellant to stop his cruelty he never heeded, until the **"beloved"** wife collapsed.

8. From the social inquiry report, the complainant and the children are at a rescue centre with the latter going to school. The children are in standard 7, 6 and 5 respectively. It is important the children live and grow up in an environment that will afford them an opportunity to grow into responsible citizens. For them to grow seeing their mother being battered like garbage by a person they call a father is the most unfortunate and humiliating thing to happen to them.

9. The Appellant was sentenced on **8th August, 2018**. He has served only a year in prison. The probation report also reveals that this incident was not the first of its kind against the complainant by the Appellant. He is a man of unmanageable anger, that must be managed before he even tries to imagine reconciling with his wife and children. It is very important to allow time for the inner wounds experienced by the complainant and children to heal.

10. It has not been shown that the learned trial magistrate considered any extraneous matters while passing sentence against the Appellant.

Considering the circumstances of this case and the maximum sentence under Section 234 of the Penal Code, I am of the view that the sentence meted out against the Appellant is very lenient. I will not interfere with it.

11. The result is that the appeal is disallowed. The conviction and sentence are upheld.

Orders accordingly.

DELIVERED, SIGNED & DATED THIS 7TH DAY OF AUGUST 2019, IN OPEN COURT AT MAKUENI.

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H. I. ONG'UDI

JUDGE