



**REPUBLIC OF KENYA**

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

**APPELLATE SIDE**

**HIGH COURT CRIMINAL APPEAL NO. 184 OF 2017**

*(From Original Conviction and Sentence in Criminal Case No. 1016/2016 of the Principal Magistrate's Court at Kabarnet.)*

**FESTUS CHRISTOPHER KANGONGO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

1. The appellant does not challenge the conviction on his own plea of guilty to the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. He challenges the sentence of 2 years imprisonment therefor and which he has almost served in full with remission at the time of the hearing of the appeal, as he is due to be released on 21/3/2018 having been sentenced on 21/11/2016.
2. The appellant offers in his Petition of Appeal mitigation that he was drunk and had fallen into bad company and that the complainant was his wife.
3. The DPP does not oppose the appeal and bearing in mind that the appellant is due to be released in a month's time suggests that he be placed on a non-custodial sentence for the remainder of the sentence term.
4. I have perused the record of the trial court. The trial court did not consider the impact of the plea of guilty to the charge as held in **Wanjema v. R** (1971) EA 403, 494 per Trevelyan, J. as follows:-

*An appellate court should not interfere with the discretion which a trial court has exercised as to sentence unless it is evident that it overlooked some material factor, took into account some immaterial factor, acted on a wrong principle or the sentence is manifestly excessive in the circumstances of the case. The instance sentence merits this Court's interference with t on each of these grounds. **No account was taken, as it should have been, of the fact that the appellant pleaded guilty: Skone (1967) 51 Cr. App. R. 165 and Godfrey (1967) 51 Cr. App. R. 449.***

**Order**

5. Accordingly, this court feels justified to interfere with the sentence of the trial court which it hereby does and pursuant to section 354(3) (a) (ii) of the CPC directs that the sentence is reduced to such period of imprisonment as will enable the appellant to be released immediately.

**DATED AND DELIVERED THIS 20<sup>TH</sup> DAY OF FEBRUARY, 2018**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

Appellant in person

Ms. Macharia Ass. Director of Public Prosecution.