



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 33 OF 2017**

**(Being an appeal arising from conviction and sentence in Kitale Chief Magistrate's Court in Criminal case No. 2593 of 2014 delivered by P. Biwott Senior Principal Magistrate on 1/9/15.**

**FRED JUMA SIMIYU.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

1. The appellant was charged with the offence of **grievous harm contrary to Section 234 of the Penal Code**. The particulars of the offence were that on the **22<sup>nd</sup> day of February 2014 at Maili Nane Trading Centre within Trans Nzoia County unlawfully did grievous harm to James Kariuki Wainaina**.
2. The appellant was convicted and sentenced to 4 years imprisonment. He has filed this appeal challenging the same. However when the matter came up for trial he filed some submissions in which he generally mitigated. He stated that he was remorseful and regretted the Offence and that he had already served 1/3 of the term. That he was unwell and his conditions was deteriorating.
3. For the above reasons I do not intend to proceed as it were with the merits and the demerits of the appeal.
4. It appears that although he was granted bond of Kshs 50,000/- or cash bail of Kshs 30,000/- he was unable to raise. He has generally been in custody since July 2014. The state submitted that the offence attracted life imprisonment.
5. My position is that the appellant must have learned his lessons. I shall therefore dismiss the appeal entirely, which after perusing the evidence on record I would have done so anyway. The evidence that was presented was cogent enough to have sustained a conviction, which it did. The respondent in any event did not ask this court to enhance the sentence.
6. The appeal is hereby dismissed. The appellant however is released forthwith unless lawfully held.

**Delivered, signed and dated at Kitale this 20<sup>th</sup> day of March 2018.**

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**H.K. CHEMITEI**

**JUDGE**

**20/3/18**

**In the presence of:**

**M/s Kakoi for the Respondent**

**Appellant – present**

**Court Assistant – Silvia**

**Judgment read in open court.**