REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BUSIA

CRIMINAL APPEAL NO. 53 OF 2015

SAMUEL SIFUNA PANYAKO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in Criminal case No. 1394 of 2012 of the

Chief Magistrate's Court at Busia by Hon. I.T Maisiba– Principal Magistrate)

JUDGMENT

1. **SAMUEL SIFUNA PANYAKO,** the appellant, was convicted of the offence of grievous harm contrary to section 234 of the Penal code.

2. The particulars of the offence were that on 14th May 2012 at **MANGENI** village, **MADIBO** Sub location of **BUSIA** County, jointly with another, unlawfully did grievous harm to **MAURICE KISA NARAMBI.**

3. He was sentenced to serve eight years imprisonment. He has appealed against the sentence. However, in his submissions he criticized the conviction.

4. The appellant was in person. He raised the following grounds of appeal:

a) That the learned trial magistrate erred in law and in fact by ignoring his mitigation.

b) That the long sentence would be detrimental to his family.

c) That he was a first offender.

5. The state opposed the appeal through Ms. Ngari, the learned counsel.

6. The facts of the prosecution case were briefly as follows:

When the complainant was looking after cattle, the appellant and another attacked him on allegations that he was grazing on their employer's land. He sustained a fractured leg among other injuries.

7. The appellant denied any involvement in the offence.

8. This is a first appellate court. As expected, I have analyzed and evaluated afresh all the evidence adduced before the lower court and I have drawn my own conclusions while bearing in mind that I neither saw nor heard any of the witnesses. I will be guided by the celebrated case of **OKENO vs. REPUBLIC [1972] EA 32.**

9. It is not open for any appellant to introduce new issues during submissions. He can only do so by filing supplementary grounds of appeal with the leave of the court. In this case no leave was sought. I will however evaluate the entire evidence this notwithstanding.

10. What was the evidence against the appellant? According to **MAURICE KHISA NAMARAMBI (PW1)** the complainant herein, the appellant joined his co-accused and both started to beat him. The appellant was not armed. His co-accused was armed with a stick which he

beat him with. This was confirmed by **VINCENT KHAEMBA (PW2)** who rescued him.

11. The medical evidence was adduced by **CORNELIUS SAMBASI (PW5).** He testified that the complainant sustained the following injuries:

a) Tenderness of the right knee joint with weakness of the whole limb.

b) Reduced flexing of the knee.

c) Firm swelling of the hip joint.

d) Complete fracture of the right femur.

These injuries were classified as grievous harm.

12. There was overwhelming evidence against the appellant.

13. It is trite law of practice that an appellate court can only interfere with the sentence meted out by the trial court upon satisfaction of some circumstances as was spelled out in Those circumstances were well illustrated in the case of **NILSSON VS REPUBLIC [1970] E.A. 599,601** as follows:

> ***The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are fairly established. The court does not alter a sentence on the mere ground that if the members of the court had been trying the appellant, they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge unless as was said in James v Rex (1950), 18 EACA 147, it is evident that the Judge has acted upon some wrong principle or overlooked some material factor! To this, we would also add a third criterion, namely, that the sentence is manifestly excessive in view of the circumstances of the case. R v Shershewsity (1912) C.CA 28 T.LR 364.***

14**.** After the learned trial magistrate had convicted the appellant, he sentenced him to eight years imprisonment. Section 234 of the Penal Code provides as follows:

> ***Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.***

15. I have evaluated the evidence on record and concluded that in the circumstances of the offence, the sentence by the learned trial magistrate cannot be said to be harsh or excessive. I have no reason to interfere with it. The appeal is accordingly dismissed.

DELIVERED and **SIGNED** at **BUSIA this 28th day** of **May, 2018**

KIARIE WAWERU KIARIE

JUDGE