



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 13 OF 2017**

**ALLAN OUMA.....APPELLANT**

**VERSUS**

**REPUBLIC.....REPUBLIC**

*(From the original conviction and sentence in Criminal case No. 386 of 2017 of the Chief Magistrate's Court at Busia by Hon. J.N Maragia – Resident Magistrate)*

**JUDGMENT**

1. The appellant, **ALLAN OUMA**, was convicted after pleading guilty to a charge of assault causing actual bodily harm contrary to section 251 of the Penal Code.
2. The particulars of the offence were that on 15<sup>th</sup> March 2017 at **MUNONGO** village, **BUKHAYO WEST** Location of **BUSIA** County, wilfully and unlawfully assaulted **PRISCA NABWIRE OUMA** occasioning her actual bodily harm.
3. He was sentenced to serve two years imprisonment.
4. The appellant was in person. He appealed against the sentence which he contended was harsh and excessive.
5. The state opposed the sentence through Ms. Ngari, learned counsel.
6. 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**.
7. 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. These 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 Shershewity (1912) C.CA 28 T.LR 364**.*

8. Section 251 of the Penal Code provides as follows:

*Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.*

The sentence that was meted out by the learned trial magistrate cannot be described as harsh or excessive. I have, therefore, no reason to interfere with it.

9. The upshot of the foregoing is that the appeal is accordingly dismissed.

**DELIVERED and SIGNED at BUSIA this 17<sup>th</sup> day of May, 2018**

**KIARIE WAWERU KIARIE**

**JUDGE**