

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

CRIMINAL APPEAL NO. 6 OF 2018

FREDRICK OCHARO RATEMO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. P. Wasike – RM dated 8th March 2018 at the Senior Resident Magistrate’s Court at Keroka in Criminal Case No. 236 of 2018)

JUDGMENT

1. The appellant, FREDRICK OCHARO RATEMO, pleaded guilty for the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code (Chapter 63 of the Laws of Kenya). It was alleged that on 24th January 2018 at Nyamasibi Sub-location in Masaba South Sub County, Kisii County he unlawfully assaulted JOSEPHINE KWAMBOKA SIMON. He was sentenced to three (3) years imprisonment.
2. At the hearing of the appeal, the appellant stated that he wanted the court to exercise leniency as he admitted the offence.
3. The Imposition of a sentence is the court’s discretion and the appellate court will only interfere if the trial magistrate erred in taking into account irrelevant facts, or failed to consider relevant facts. It may also intervene if the trial court erred in applying a particular principle or considering the circumstances as a whole, the sentence is harsh and excessive.
4. In this case the appellant assaulted his mother with a stick on the head causing her to bleed and fall as a result. Upon conviction, the appellant expressed remorse. The trial magistrate directed the Probation Office to prepare a sentence review report which recommended a non-custodial sentence as it appeared that the incident was caused by him in the course of his mother intervening in a fight between him and his sister.
5. At the sentencing hearing, the complainant stated that, *“I pray that I have not healed, the accused should remain inside to get discipline. He will beat me again”*.
6. Considering both the report and the complainant’s view, the trial magistrate imposed a sentence of three years.
7. Having considered the fact that the appellant pleaded guilty and was remorseful, I would reduce the sentence further to two (2) years imprisonment. Consequently the conviction is affirmed and the sentence is reduced to two (2) years imprisonment. Right of appeal explained.

Dated and delivered at Kisii this 21st day of September 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions.

Appellant in person.