

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT CHUKA

HCCRA NO. 15 OF 2017

BENARD GITONGA MITAMBO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal against conviction and sentence by Resident Magistrate

Hon. F.M. Nyakundi at Marimanti in the Principal Magistrate's Court

Criminal Case No. 447 of 2014 dated 11th December, 2014.)

R U L I N G

1. **BENARD GITONGA MITAMBO**, the appellant herein was charged and convicted with the offence of grievous harm contrary to **Section 234** of the **Penal Code**. He was sentenced to serve 4 years in jail.

2. He was dissatisfied with the conviction and filed this appeal. However when the appeal came up for mention for directions, the appellant abandoned his appeal and applied for revision of his sentence. The reasons for the revision coincidentally are contained in his petition for appeal. He contends that has reformed now and has learned useful skills which would help him assist his family.

3. This court has considered the application by the applicant and the grounds upon which it has been. This court has noted from the record and proceedings from the lower court that the appellant actually faced 3 counts because apart from the grievous harm, he was also charged with stealing contrary to **Section 279** of the **Penal Code** and malicious damage to property contrary to **Section 339(1)** of the **Penal Code**. He was found guilty in the 2 counts of causing grievous harm and 3rd count of malicious amage to property and was convicted. He was sentenced to serve 5 years for causing grievous harm and 4 years for the offence of malicious damage to property. Both sentence were to run concurrently. This court has further noted that the appellant herein was not a first offender and given the nature of injuries he caused the complainant, this court finds that the sentence he got was infact very lenient and this court could have enhanced the same had the Republic (Director of Public Prosecution) asked for enhancement. This court finds no merit in the appeal as well as his application to have the sentence revised. The same is dismissed. The conviction and sentence are upheld.

Dated, signed and delivered at Chuka this 27th day of November 2018.

R.K. LIMO

JUDGE

27/11/2018

Ruling is dated, signed and delivered in the open court in the presence of the Applicant and Machirah for state.

R.K. LIMO

JUDGE

27/11/2018