



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

CRIMINAL APPEAL NO. 22 OF 2017

[FORMERLY ELDORET HCCRA NO 38 OF 2012]

NELSON KANDIE SUMUKWO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[An appeal from the original conviction and sentence

in criminal case no. 539 of 2011 in the Principal Magistrate's Court

at Kabarnet delivered on the 24th & 28th day of February, 2014

by Hon. H. Nyaga SPM]

JUDGMENT

1. The appellant was on 24th and 28th February 2012, respectively, convicted and sentenced to 3^{1/2} years imprisonment for the offence of grievous harm contrary to section 234 of the Penal Code. He filed his petition of appeal on 29/2/2012.
2. Before the appeal could be heard, Counsel for the appellant indicated that the complainant wished to forgive the appellant, and that before the matter could be dealt with on the basis of the reconciliation. The DPP did not object.
3. The Court considered it a constitutional duty in any appropriate matter to promote alternative dispute resolution in terms of Article 159 (2) (c) of the Constitution. Being a personal matter of an assault and grievous harm, I considered it appropriate to allow reconciliation as method of resolution of dispute between the parties, with concurrence of the DPP.
4. The complainant Anthony Bargoge Tarus was examined by the Court on Oath and he confirmed that he had fully recovered from the Assault by the appellant and that he had unconditionally forgiven the appellant and the matter had been settled at the family level by the elders as the accused was his cousin.

DETERMINATION

5. This is a proper case for the use of alternative dispute resolution mechanism of reconciliation as the

complainant and the appellant are cousins; the offence is one of personal nature being grievous harm contrary to section 234 of the Penal Code, and the matter has been settled at the family level by the clan elders.

6. As the DPP agrees, the Court promotes Alternative Dispute Resolution and pursuant to Article 159 of the Constitution, the Court allows the appeal from the sentence pursuant to section 354 (3) (b) of the Criminal Procedure Code and alters the nature of the sentence having regard to the reconciliation between the parties.

7. There shall therefore, be an order for discharge of the appellant under section 35 (1) of the Penal Code absolutely and unconditionally, as the matter has now been settled by reconciliation of the parties.

Order accordingly.

DATED AND DELIVERED THIS 20TH DAY OF DECEMBER 2018

EDWARD M. MURIITHI

JUDGE

Appearances:

Appellant in person.

Ms. Macharia, Assistant DPP for the Respondent.