



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT SIAYA
CRIMINAL APPEAL NO. 137 OF 2016
(ASSAULTING A POLICE OFFICER)
(CORAM: J.A. MAKAU – J.)

KENNEDY OKOTH OCHIENG.....APPELLANT

VS

REPUBLIC.....RESPONDENT

(Being an Appeal against the sentence dated 25.02.2015 in Criminal

Case No. 995 of 2015 in Bondo Law Court before Hon. M. Nafula-SRM)

J U D G M E N T

1. The appellant **KENNEDY OKOTH OCHIENG** was charged with an offence of assaulting a police officer contrary to **Section 253(b) of the Penal Code**. The particulars of the charge are that on the 24th day of October 2014 at around 2115hrs at Memba sub-location, in Rarieda sub-county within Siaya County, assaulted No. 20081385530 **SYDNEY SARO**, a police officer who at the time of the said assault was acting in the due execution of his duty.
2. After full trial the appellant was found guilty, convicted and sentenced to serve five (5) years imprisonment.
3. Aggrieved by the sentence the appellant filed what he refers to as mitigating grounds as follows: -
 - a. That the appellant pleaded guilty to the offence in question.*
 - b. That the appellant is an orphan with tender siblings who solidly depend on him for their daily needs.*
 - c. That the appellant has done rehabilitative programmes and by these has remained to be productive in the prison and would do the same if permitted to go back to the society.*
 - d. That the appellant begs the Honourable Court to consider his humble request and reduce the harsh sentence of five years and for so give him a non-custodial sentence.*

4. The appellant prayed that the sentence imposed upon him be set aside and be substituted with a non-custodial sentence.

5. The State submitted the sentence of 5years is the maximum sentence for the offence of assault and therefore lawful.

6. **Section 253(b) of the Penal Code** under which the appellant was charged provides that on conviction, the offender is liable to imprisonment for a period of 5years.

7. The facts of the case are:- that on 24th day of October, 2014, No. 2008138530 APC Sidney Saro Harrison received a report from a girl aged 12years that her brother, the accused had assaulted her, who they asked to go to the hospital. On 24/10/2014 at 11:00pm, he received information from Area Assistant Chief that the appellant herein was causing disturbance at his home. They proceeded to the scene and while on the road, they met the appellant who was armed with a panga and who looked violent; that he cut the No. 2008138530 on the neck. He was arrested and taken to the post. The complainant was taken to the hospital and was issued with a P3 form. The degree of injury was assessed as harm as the stitches were done in layers. The appellant was later charged with this offence.

8. I have considered the appellant's mitigation and the fact that he had not only assaulted the police officer but his young sister and on meeting the police officers on the way, he became violent and cut a police officer with a with a panga. The fact of him being an orphan and having dependants is not a justification for commission of this offence. The sentence meted is lawful and I find the appellant needs to remain in custody for a while to rehabilitate.

9. **The upshot is that the conviction is upheld and sentence confirmed.**

DATED AND SIGNED AT SIAYA THIS 30TH DAY OF MARCH 2017.

J.A. MAKAU

JUDGE

DELIVERED IN OPEN COURT.

In the presence of:

Appellant: in person, present

M/S Odumba: for State

Court Assistants:

1. George Ngayo

2. Patience B. Ochieng

3. Sarah Ooro

J.A. MAKAU

JUDGE