



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA
CRIMINAL APPEAL NO. 162 OF 2016
(GRIEVOUS HARM)
(CORAM: J.A. MAKAU – J.)

LUCAS OMONDI MIKOHO.....APPELLANT

VS

REPUBLIC.....RESPONDENT

(Being an Appeal against both the conviction and the sentence dated 7.11.2016 in Criminal Case No. 311 of 2016 in Bondo Law Court before Hon. M. Obiero-P.M.)

J U D G M E N T

1. The appellant **LUCAS OMONDI MIKOHO** was charged with an offence of grievous harm contrary to **Section 234 of the Penal Code**. The particulars of the charge are that: on the 26th February 2016 at about 0730hours, in Ndori sub-location, Gem Sub County within Siaya County, unlawfully did grievous harm to **THOMAS MIYERE MIKOLO**.
2. After full trial, the appellant was found guilty, convicted and sentenced to serve three (3) years imprisonment.
3. Aggrieved by the sentence, the appellant filed a petition of appeal against both the conviction and sentence setting out three major grounds of appeal as follows: -
 - a) *That the Learned trial magistrate erred in law and fact by convicting the accused on contradicting prosecution evidence.*
 - b) *That the Learned trial magistrate erred in law and fact by convicting the accused when the evidence on record did not support the charge.*
 - c) *That the Learned trial magistrate erred in law and fact by convicting the accused by relying on uncorroborated prosecution evidence.*
4. At the hearing of the appeal, the appellant abandoned his appeal against conviction and urged his appeal against sentence. He urged that he is 60years old, suffering from backache since 2010 and that he is the breadwinner of his family, comprising of 6 children, whose ages range between 20years and 7years; that he is a first offender, that he is remorseful and undertook not to commit any other offence.

5. M/S Odumba, Learned State Counsel urged the sentence meted is legal, however as regards reduction of the sentence or issuance of an alternative sentence; she left the matter to the court's discretion.

6. The facts of the prosecution's case are that: on 26/2/2016 at about 7.30am, the complainant was ploughing his farm together with his wife, PW2, while the accused was slashing in his farm bordering the complainant's and in the process; the appellant attacked the complainant, cutting him on different parts of the body. The appellant then ran away. The complainant went to the hospital whereby he was treated. He later went to the police, made a report, was issued with P3 form which was filled, assessing the degree of injury as grievous harm and which was produced as exhibit 4.

7. **Section 234 of the Penal Code** provides: -

“234. Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”

8. I have very carefully considered the nature of injuries sustained by the complainant, the circumstances surrounding the commission of the offence and the mitigation raised by the appellant; that he is an elderly man, with a family which need his support, that he is sickly and a first offender, however, the offence he was charged with is serious. I have considered that the appellant is remorseful and undertook not to commit any other offence.

9. The upshot is that the conviction is upheld. The sentence meted of 3years is set aside and substituted with a probation period of 1year and 6months starting from today under the supervision of the Probation Office, Siaya County.

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