



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL APPEAL NO.75 OF 2015

NICHOLAS MUREITHI APPELLANT

VERSUS

REPUBLIC RESPONDENT

(From the original conviction and sentence in criminal case No.1839 of 2015 of the Chief Magistrate's Court at Maua by Hon. C.M Maundu – Senior Principal Magistrate)

JUDGMENT

The appellant, **NICHOLAS MUREITHI**, was convicted for the offence of grievous harm contrary to section 234 of the Penal Code.

The particulars of the offence were that on 3rd June 2015 at Kiegoi location in Igembe South sub County of Meru County, he unlawfully did grievous harm to **MARTIN MWENDA**.

The appellant was sentenced to serve six years imprisonment after he pleaded guilty to the offence. He now appeals against both conviction and sentence.

The appellant was in person. He raised the following grounds of appeal:

1. That his plea was equivocal.
2. That at the time of plea he was 17 years of age.
3. That he was not given a chance to explain his position.

The state opposed the appeal through Mr. Odhiambo, the learned counsel.

Where an accused person has pleaded guilty to an offence, he is estopped from appealing against the conviction thereof under the provisions of section 348 of the Criminal Procedure Code which provides as follows:

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

Since the appellant has raised issue with his plea, I will endeavour to establish whether the plea was unequivocal or not.

Although the appellant contends that his plea was equivocal, the record does not support this contention. After he admitted the charge and the facts were read to him, he confirmed them to be correct. He never informed the court that the offence was not intentional. I make a finding that the plea was unequivocal.

Although the record on 19th June 2015 indicate that there was an age assessment report that showed that the appellant was between 13- 15 years, on 26th June 2015 while he was mitigating, he said he was 18 years. An age assessment report that was tendered in court date stamped 25th June 2015 by M.O.H Igembe gave his age as between 21 and 24 years. I therefore make a finding that at the time of plea, the appellant was over the age of 18 years.

When an accused person pleads guilty to an offence, he forfeits the chance to tell his side of the story though not absolutely. If he disputes the facts or during mitigation he introduces issues that would suggest he is pleading either justification or he is introducing a defence, the trial court is duty bound to enter a plea of not guilty and set the matter for hearing. This did not happen in the instant case. He cannot now raise issues touching on facts.

The sentence meted out was very lenient in the circumstances of this case. I will not disturb the sentence.

The appeal is dismissed.

DATED at MERU this 26th day of April, 2017

KIARIE WAWERU KIARIE

JUDGE