

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MIGORI

CRIMINAL APPEAL NO. 02 OF 2017

CHACHA RIOBA RUGWI.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal arising from the sentence by Hon. P. N. Maina, Principal Magistrate in Kehancha Principal Magistrate's Criminal Case No. 206 of 2014 delivered on 27/09/2016)

JUDGMENT

1. The appellant herein, **CHACHA RIOBA RUGWI** was jointly charged with one **JOSEPH SINDA NYAKEHE** with offence of **assault causing actual bodily harm** contrary to **Section 251** of the **Penal Code**. They denied the offence and were tried, found guilty and convicted. They were sentenced to 3 years' imprisonment.
2. The appellant then preferred an appeal against the sentence contending that the sentence was too excessive given that he was a family man with children.
3. I have considered the appeal and the written submissions and find that the Appellant has not demonstrated the principles laid in the case of **Wanjema v. Republic (1971) EA 493** upon which the first appellate Court may act on in dealing with an appeal on sentence. An appellate Court can only interfere with the sentence imposed by the trial Court if it is satisfied that in arriving at the sentence the trial Court did not take into account a relevant fact or that it took into account an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the appellate Court must not lose sight of the fact that in sentencing, the trial Court exercised discretion and as long as the discretion is exercised judicially and not capriciously, the appellate Court should be slow to interfere with that discretion.
4. The appellant was sentenced to 3 years out of the possible 5 years. The sentence was commensurate with the circumstances under which the offence was committed offence moreso that the assailants were two whereas the victim was alone and had not provoked them in anyway whatsoever.
5. The appeal is therefore unsuccessful and is hereby dismissed.

Orders accordingly.

DELIVERED, DATED and SIGNED at MIGORI this 10th day of April 2017.

A. C. MRIMA

JUDGE