

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL APPEAL NUMBER 90 OF 2015

KIBURI NTOAMBUTO.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal against the Judgment of Hon. B. Mararo – PM, delivered on 22nd July 2015 in Tigania Cr Case No.772 of 2015 at Tigania Principal Magistrate's Court)

J U D G M E N T

The appellant was charged with the offence of grievous harm contrary to section 234 of the Penal Code. The particulars of the offence are that the appellant on the 7th December 2014 at Mlango location in Tigania East District within the Meru County, willfully and lawfully did grievous harm to **JOSEPH BAARIU** by cutting him on his left hand by use of a panga.

The appellant pleaded guilty to the charge and was sentenced to serve five years imprisonment. In his petition of appeal dated 30th July 2015, the appellant states that the five (5) years sentence is harsh and excessive considering the circumstances of the case. It is also stated that he injured the complainant because he found him in his farm stealing bananas. The complainant was the first to report to the police station and that is why the appellant was charged. During the hearing of the appeal, the appellant informed the court that it is true he assaulted the complainant but the complainant was harvesting the appellant's miraa. The farm has his crops and the complainant is using his miraa. Mr. Odhiambo prosecution counsel submitted that the appellant pleaded guilty. The charge was read over and he pleaded guilty. The sentence is proper as the offence was that of grievous harm.

The record of the trial court shows that the plea was taken on 19th May 2015. The appellant pleaded not guilty and was granted a bond of kshs.50,000/= with one surety of similar amount. The matter was mentioned several times. On 21st July 2015, the appellant changed his plea and pleaded guilty to the charge. The facts were read the following day and he pleaded guilty to the charge. The conviction is therefore proper as the plea is an equivocal.

The P3 form that was produced indicate that the victim sustained a fracture of the left distal ulnar. That is a serious injury. Although the charge indicates that the appellant used a panga to assault the complainant, the facts read to the court indicate that he used a stick. There is no prejudice occasioned to the appellant.

The appellant was convicted on 22nd July 2015 and sentenced on the same day. He has now served about two (2) years of the sentence. I do find that period to be enough punishment. The five (5) year imprisonment is hereby set aside and replaced with the period already served. The appellant shall be set at liberty unless otherwise lawfully held.

Dated signed and delivered at Meru this 29th day of June 2017.

SAID CHITEMBWE

JUDGE