

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL APPEAL NO. 6 OF 2017

(Formerly BUNGOMA HIGH COURT CRIMINAL APPEAL NO. 1 OF 2015)

JOEL ISHANGA APPELLANT

VERSUS

REPUBLIC RESPONDENT

[An appeal against conviction and sentenced dated 29th December, 2014 by P.N. Areri, Principal Magistrate in Bungoma CM Criminal Case No. 3158 of 2014]

JUDGEMENT

1. The Appellant Joel Gabriel Ishanga was on 29th December, 2014 convicted on his own plea of guilty and sentenced to serve five years imprisonment for unlawfully causing grievous harm to Billy Barasa on 13th December, 2014 at Kakenout Village, Teso North District within Busia County. Being aggrieved by the outcome of the trial he has filed this appeal.
2. When the appeal came up for hearing on 8th March, 2017 the Appellant abandoned his appeal against conviction and indicated that he was only appealing against the sentence. This was in line with his written submissions filed in Court on 3rd March, 2017.
3. In his petition of appeal dated 4th January, 2015 the Appellant had indicated that he had pleaded guilty without being warned of the consequences. He claimed that he had been lured into pleading guilty by the investigating officer on the ground that he would be placed on probation. Further, that he was not allowed to defend himself.
4. Mr. Owiti for the State conceded the appeal on sentence and indicated that the State would not be opposed to a review of the same.
5. For record purposes, it is noted that the plea was unequivocal and the Appellant was indeed wise in abandoning his appeal against conviction.
6. As for the sentence, I note that nowhere in his Petition of Appeal did the Appellant complain against the sentence. His complain only arose through his submissions. Having not challenged the sentence through his appeal, he cannot be allowed to do the same through submissions. The basis of an appeal is the grounds of appeal contained in the petition of appeal. The Appellant has not taken issue with the sentence through the grounds of appeal. That is to say there is no appeal against the sentence. As the sentence is legal, and considering that the complainant was seriously injured, I find no reason for interfering with the same. The appeal fails and the same is dismissed.

Dated and signed at Malindi this 27th day of June, 2017.

W. KORIR,

JUDGE OF THE HIGH COURT

Dated, delivered and signed at Busia this 12th day of July, 2017.

K. W. KIARE,

JUDGE OF THE HIGH COURT