



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL CASE APPEAL NO. 57 OF 2016

JOSEPH NKUTA KINYUA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence by Hon. E.Bett –Senior Resident Magistrate dated 24th March 2016 in Nanyuki Chief Magistrate Court Criminal Case No. 343 of 2016)

JUDGMENT

1. The appellant **JOSEPH NKUTA KINYUA** was charged and convicted before the Nanyuki Chief Magistrate's Court with the offence of grievous harm Contrary to Section 234 of the Penal Code.
2. The appellant was convicted on his own plea of guilt. He was sentenced to serve 7 years imprisonment. He has filed this appeal against that sentence.
3. The facts of the case given by the prosecution before the trial court case were:

Court Prosecutor: *On the 21st of March at around 2.00a.m. the complainant Jacob Kirimi were refreshing themselves at Kanyoni market with the accused person. They then together left the market and on the way home a quarrel between the two ensued and at the junction the accused person removed his panga and cut the complainant on both hands and right leg. He obtained deep cuts. The complainant fell down and lost consciousness. The accused then fled away and the complainant was assisted by a member of the public who called a Nanyuki ambulance and the complainant was taken to Nanyuki T R H and admitted. The relatives of the complainant were informed and they reported the matter at the police. The investigating officer visited the complainant at the hospital and he gave out the number of the accused. They then went looking for the accused and the accused was arrested.*

The investigating officer again visited the same hospital and he issued the complainant with a P3 form.

The P3 form was filled and injuries assessed as grievous harm. The P3 is produced as an exhibit. The complainant is still admitted at the hospital.

4. The trial court in sentencing the appellant considered the aggravated circumstances of the attack by appellant against the complainant. The court noted that the appellant had inflicted a total of ten cuts on complainant's body. The injuries inflicted by the appellant were indeed very serious and were noted in

the P3 as follows:

Upper limbs Right 10cm cut wound with 6 cut tendons

6cm cut wound on the middle finger

4cm cut wound on the 2nd digit.

Upper Limbs Left 4cm cut wound on the arm (distal aspect)

Lower limbs Right 15 cm cut wound on the knee with fractured patella at the distal aspect.

5cm cut wound at the midshaft tibia

10cm cut wound on the foot

Lower Limbs Left 2cm cut wound on the knee

8cm cut wound on distal tibia

5cm cut wound on the foot

5. Bearing in mind the above injuries suffered by the complainant in the hands of the appellant and considering that the maximum sentence under Section 234 of the Penal Code is life Imprisonment it cannot be said that the 7 years imprisonment imposed on the appellant was not excessive. The trial court did not in my humble view act on wrong principles. The appellant before the trial court did not offer any mitigations. The fact that appellant is now reformed, as he submitted before this court is not reason to interfere with trial court's discretion in sentencing.

6. The above being the view of this court the appeal against sentence is hereby dismissed. The trial courts sentence is confirmed.

Dated and Delivered at Nanyuki this 2nd August 2017

MARY KASANGO

JUDGE

Coram

Before Justice Mary Kasango

Court Assistant: Njue

Appellant : Joseph Nkuta Kinyua

For state:

Language

COURT

Judgment delivered in open court

MARY KASANGO

JUDGE