



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO. 97 OF 2015**

**RONALD NGENO.....APPELLANT**

**VERSUS**

**REPUBLIC.....STATE**

*(Appeal from the Judgment of the Chief Magistrate's Court at Molo Hon. H. M Nyaga – Chief Magistrate delivered on the 4<sup>th</sup> March, 2015 in CMCR Case No. 2357 of 2013)*

**JUDGEMENT**

The appellant **RONALD NGENO** has filed this appeal challenging the sentence imposed upon him by the learned Chief Magistrate sitting at the Molo Law Courts.

The appellant together with another (who is not a party to this appeal) were both arraigned before the Chief Magistrate's Court in **Molo** on a charge of **ROBBERY WITH VIOLENCE CONTRARY TO SECTION 296(2) PENAL CODE**. The appellant pleaded '**Not Guilty**' to the charge.

The case was duly heard and in his judgment delivered on 4/3/2015 the learned trial magistrate in exercise of his powers under Section 179 of the Criminal Procedure Code acquitted the appellant of the charge of Robbery with Violence and instead convicted him of the lesser charge of **ASSAULT CAUSING GRIEVOUS BODILY HARM CONTRARY TO SECTION 251 PENAL CODE**. Thereafter the trial court sentenced the appellant to serve five (5) years imprisonment with no option of a fine. Being aggrieved by this sentence the appellant filed this appeal.

The appellant had filed in court his written submissions in which he confined himself to challenging his **sentence only**. On the date for the hearing of this appeal the appellant reiterated that he had no wish or desire to challenge his conviction. His appeal was limited to his sentence only. The appeal was opposed.

In his written submissions the appellant termed his sentence as both harsh and excessive. He also submitted that the trial court failed to take into account his mitigation before imposing sentence.

As a court of first appeal I considered it my duty to peruse the record and determine if the appellant's trial was lawful and procedural in the manner in which the appellant's trial was conducted. I found nothing to fault in the conduct of the trial. The prosecution called four (4) witnesses and the appellant was allowed an opportunity to cross examine each witness.

Similarly my perusal of the judgment reveals nothing untoward. The learned trial magistrate addressed all the relevant issues and did come to a lawful decision.

Following his conviction the appellant was allowed an opportunity to mitigate. The trial magistrate also invited comments from the complainant being a Victim Impact statement before imposing the sentence. Finally the court sentenced the appellant to five (5) years imprisonment.

Section 231(a) of the Penal Code provides for a maximum sentence of life imprisonment for the offence of Assault causing Grievous Bodily Harm. The P3 form produced to support the injuries sustained by the victim indicates that he sustained a fracture of the left wrist. Even when the complainant appeared to testify the court noted that his hand was deformed as a result of the injury.

This was not a minor assault. This was a painful assault which would take a long time to fully heal. In my view the custodial sentence was appropriate. The sentence imposed was only five (5) years way below the maximum of life imprisonment provided by law. In my view the

sentence was not excessive given the circumstances.

Based on the above, I dismiss the appellant's appeal against his sentence. I uphold and confirm the sentence imposed by the trial court.

**Dated this 13<sup>th</sup> day of October, 2017.**

Appellant in person

**Maureen A. Odero**

**Judge**