



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAHURURU**

**CRIMINAL APPEAL NO.116 OF 2017**

**(Appeal Originating from Nyahururu CM's Court Cr.No.1268 of 2015 by: Hon. A.W. Mukenga – R.M.)**

**FRANCIS KARIUKI MBATIA.....APPELLANT**

**- V E R S U S -**

**REPUBLIC.....RESPONDENT**

**J U D G M E N T**

**Francis Kariuki** was convicted for the offence of grievous harm contrary section 234 of the Penal Code by Hon. Mukenga R.M.

The particulars of the charge were that on 11/6/2013 at Site Estate in Ol Kalou District, Nyandarua City, unlawfully did grievous harm to Anastasia Wanjiku.

After a full trial, the appellant was sentenced to 3 years imprisonment. He has filed an appeal challenging both conviction and sentence. However, when he came to court, he intimated to the court that he only wished to proceed with the appeal against sentence. He informed the court that he has since transformed, he has acquired a certificate in Business and Carpentry; that he has served half the term and prays for a non custodial sentence for the balance of the sentence; that he left his family in a plot; the mother is old and he was a first offender.

The State did not oppose the appeal and left it to the court to decide.

I have considered that accused was a first offender. I note that though the offence committed was grievous harm, and the appellant was handed a prison sentence of only 3 years which in my view, was lenient. The appellant was sentenced on 22/7/2016, one year 3 months ago.

The injuries inflicted on the complainant were not aggravated in nature. For that reason, I will call for a Probation Officer's report to guide this court on whether or not this court can interfere with the sentence and place the appellant on non custodial sentence.

**Dated, Signed and Delivered at NYAHURURU this 17<sup>th</sup> day of November 2017.**

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**R.P.V. Wendoh**

**JUDGE**

**PRESENT:**

..... Prosecution Counsel

..... - Court Assistant

Appellant – present

..... -for appellant