

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 66 OF 2016

(Appeal from conviction and sentence in Kangema PM Criminal Case No 120 of 2016 – D M Kivuti, SRM)

JOHN WAITHANJE GICHUKI.....APPELLANT

VERSUS

REPUBLICRESPONDENT

J U D G M E N T

1. The Appellant, **John Waithanje Gichuki**, was convicted after trial of **assault causing actual bodily harm** contrary to **section 251** of the **Penal Code**. It was alleged in the charge that on 25/10/2015 at Karwathe Village in Kangema Sub-County within Murang'a County, he unlawfully assaulted one **Annah Wanjiku Waithandi** and thereby occasioned her actual bodily harm. He was sentenced to 5 years imprisonment. He has appealed against both conviction and sentence.

2. On 02/10/2017 when the appeal came up for hearing the Appellant informed the court that he was satisfied with the conviction and wished to argue only the appeal against sentence. His appeal against conviction is therefore deemed abandoned.

3. Regarding sentence, the Appellant stated that the Complainant was his own mother and that he has since reconciled with her; and further, that she regularly visits him in prison. The lady was not in court to confirm this.

4. Learned prosecution counsel submitted that though the Appellant was awarded the maximum sentence provided by the law for the offence, he richly deserved the same for the following reasons –

(a) This was the Appellant's third assault upon his own mother. For the first assault he got 2 years imprisonment and for the second one he got one year imprisonment.

(b) For this third assault he throttled her, hit her on the left thorax region, and she lost a tooth in the assault.

5. The Appellant admitted before this court these previous assaults of his own mother and the attendant convictions and sentences.

6. The Appellant is obviously a habitual assaulter of his own mother. In this latest assault he was lucky he was not charged with causing her grievous harm as she lost a tooth.

7. One can only hope that the sentence he is now serving will be long enough for him to reflect on his life and ways, and be weaned of the drugs that appear to lead him astray - as found in the probation report filed before the trial court.

8. As for the appeal against sentence, I find no merit in it at all. It is hereby dismissed. His appeal against sentence having been abandoned, the entire appeal is hereby dismissed. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 17TH DAY OF NOVEMBER 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 17TH DAY OF NOVEMBER 2017