

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

HCRA NO. 3 OF 2015

(FORMERLY MERU HCRA 44 OF 2015)

GEOFREY GITONGA NKONGE.....APPELLANT

VERSUS

REPUBLIC.....PROSECUTOR

(An Appeal from Ruling of C.K.OBARA - SRM made on 11/2/2015 in Chuka Senior Resident Magistrate's Criminal Civil Case No. 1280 of 2013).

RULING

1. On 30th December, 2013, the Appellant was arraigned before the Principal Magistrate's Court, Chuka with the offence of assault causing actual bodily harm contrary to Section 251 of Penal Code. It was alleged that on the 28th September, 2013 at Kiriguni village, Kiriani Sub-location, Murugi location within Tharaka Nithi County, the Appellant unlawfully assaulted one Jackson Nkonge Kiraithe, thereby occasioning him actual bodily harm.

2. The Appellant pleaded not guilty. After the trial, he was found guilty, and was convicted and sentenced on 11th February, 2015 to imprisonment for one and a half (1 ½) years without an option of a fine. He appealed to this court under a Petition of Appeal dated 11th March, 2015. In that appeal, he christened his grounds as "Mitigation". These were, inter alia, that he was seeking the mercy of the court to reduce the sentence of one and a half (1 ½) years and that he was a first offender.

3. When the appeal came up for hearing on 28th January 2016, he indicated that he did not wish to argue the same. That what he wanted was the court to reduce his sentence to the period he had served. This court thereupon ordered for a Community Service Order Report. The same was prepared and has been presented to this court. From the said report, the victim of the offence Jackson Nkonge Kiraithe is the Appellant's father. The father indicated that the Appellant had spoken to him while in prison, had sought forgiveness and had promised never to go back to alcohol. The father indicated that he was convinced that the Appellant had learnt a lesson. That he had forgiven him and that he had no objection to his release. The report also indicates that the community is receptive and acceptable to receive the Appellant back.

4. Accordingly, the report being positive on the Appellant, I hereby forthwith order the release of the Appellant under the provisions of the Community Service Order Act and direct that he serves the balance of his term at Kiriani Primary School under the supervision and directions of the Probation Officer Chuka.

It is so ordered.

DATED and Delivered at Chuka this 25th day of February, 2016.

A. MABEYA

JUDGE

Court:

Ruling read and delivered in open court in the presence of the Appellant

A.MABEYA

JUDGE

25/2/2016