



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT BUSIA**

**HIGH COURT CRIMINAL APPEAL NO. 11 OF 2016**

**MARGRET KIRINYA OMUKAGA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(An appeal from the sentence imposed on 8<sup>th</sup> December, 2015 by Washika Wachira, SRM)**

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

1. On 8<sup>th</sup> December, 2015 Margaret Kirinya Omukaga, the Appellant, appeared in Court and pleaded guilty to a charge of causing grievous harm to one Chrisados Elodi contrary to Section 234 of the Penal Code. She was sentenced to serve four years imprisonment.
2. She now appeals against the sentence on the grounds that the same was harsh and excessive, that the Magistrate did not consider her mitigation and the fact that she was not a first offender; that she is remorseful, and that she is suffering from ill health.
3. The State did not oppose the appeal. Mr. Owiti for the State stated that the Appellant saved the Court's time by pleading guilty and that she is a first offender. Further, that although the Appellant could not benefit from remission of sentence as she was convicted at a time when remission had been done away with, remission had since been reinstated and the Court should consider this fact in reviewing the sentence.
4. The P3 form disclosed the injury sustained as a deep penetrating injury on the left temporal area measuring approximately 2cm X 1cm X 1cm and multiple penetrating injuries on the head and face. The medical officer who prepared the P3 form concluded that the complainant had suffered grievous harm.
5. Much as sentencing is the discretion of the trial Court, this Court has a duty to consider the facts of each case in order to reach a conclusion as to whether the sentence was harsh in the circumstances. In the case at hand the injuries, though the doctor may have concluded could endanger life, are likely to fully heal with time. No permanent injury was thus caused to the complainant.
6. The Appellant was also a first offender and had indicated to that Court that she was sorry and was not going to repeat the offence. By pleading guilty the Appellant had signalled that she acknowledged her mistake.
7. In the circumstances of this case, I find that a custodial sentence was too harsh. The sentence is therefore set aside. A pre-sentence report to be availed by the Probation Department within the next seven days in order to guide the Court as to the type of non-custodial sentence to impose.

Dated, signed and delivered at Busia this 18<sup>th</sup> day of August, 2016

**W. KORIR,**

**JUDGE OF THE HIGH COURT**