



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL APPEAL NO. 57 OF 2015

WAMBUA MASAVI.....APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence in Mutomo Senior Resident Magistrate's Court Criminal Case No. 6 of 2015 by Hon. Z. J. Nyakundi Ag. S P M on 07/01/15)

J U D G M E N T

- 1. Wambua Masavi**, the Appellant, was charged with the offence of **Causing Grievous Harm** contrary to **Section 234** of the **Penal Code**. Particulars of the offence were that on **25th November, 2014** at about **3.00 p.m.** at **Munyuni Village, Voo Location** in **Mutomo Sub-county** within **Kitui County** did **Grievous Harm** to **Mutia Mulwa**.
2. He admitted the charge at the outset, was convicted and sentenced to serve **seven (7) years imprisonment**.
3. Being dissatisfied with the sentence meted out he now mitigates against the severity on grounds that:
 - Being a first offender he was profoundly shocked and confused by the charges and could not comprehend the trial process such that he was unaware of the consequences.
 - In case the court exercises its discretion by being lenient to him he would mould his future, be a law abiding citizen and build the nation.
4. At the hearing he stated that his parents are deceased. He has many problems. When he committed the offence he had consumed alcohol that he was given by the Complainant, his employer.
5. In a response thereto, the State through **Ms. Amojong**, learned State Counsel, opposed the appeal. Urging the court to uphold the sentence meted out, she argued that the plea was unequivocal and the felony committed attracts upto life imprisonment.
6. Being an Appellate Court, my duty is to reconsider what is on record and come up with my own conclusion.
7. I have been asked to interfere with the sentence imposed by the Lower Court. In the case of **Ogola s/o Owoura vs. Reginum (1954) 21,270** it was held thus:

“The principles upon which an appellate court will act in exercising its jurisdiction to review sentences are firmly established. The court does not alter a sentence on mere ground that if the

members of the court had been trying the Appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial Judge, unless, as was said in James vs. Republic (1950) 18 E.A. CA 147

“It is now settled law that sentence is a matter of discretion of the trial court and must be based on the facts and circumstances of each case. An appellate court will normally not interfere with sentence unless the sentence is manifestly excessive or is based on wrong principles.”

8. Looking at the circumstances in which the offence was committed, the Complainant encountered the Appellant who told him that he would kill him. He proceeded to pick a stick that he used to hit him on the legs. After the Complainant snatched him the stick the Appellant went to a neighbour's home picked a hoe that he used to injure the Complainant. When the charges were read to him he admitted the same. On being given an opportunity to mitigate he had nothing to state.

9. The trial court considered the fact that the Appellant was not remorseful prior to sentencing him.

10. In his mitigation the Appellant expressed the fact of lack of knowledge of the consequences of admitting the charge. However, he does not deny the fact of having committed the act that resulted into the Complainant sustaining grievous harm. The Appellant herein is a young adult and was a first offender. At the time of examination following injuries sustained some 18 days later, the Complainant who sustained a deep cut wound on the frontal aspect of temporal area of his head with the skull exposed and fractured was in fair general condition.

11. In the circumstances the sentence meted out of **seven (7) years imprisonment** was excessive. The appeal therefore succeeds.

12. Consequently, I set aside the sentence imposed and substitute it with a sentence of **four (4) years imprisonment**. The Appellant shall serve the sentence with effect from the date of conviction by the Lower Court.

13. It is so ordered.

Dated, Signed and Delivered at Kitui this 21st day of September, 2016.

L. N. MUTENDE

JUDGE