

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL NO. 62 OF 2013

MUSYOKA KILONZO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence in Kithimani Principal Magistrate's

Court Criminal Case No. 502 of 2012 by Hon. M.A. Opanga, Ag SRM on 4/12/2012)

JUDGMENT

1. **Musyoka Kilonzo**, the Appellant was charged with the offence of causing grievous harm contrary to **Section 234** of the **Penal Code**. Particulars of the offence being that on the 4th day of March, 2012 at Ikombe Location, Yatta District within Machakos County, unlawfully did grievous harm to **Jeremiah Maingi Mulwa** .

2. He was tried, convicted and sentenced to eight (8) years imprisonment.

3. Being dissatisfied with the decision of the court he appealed against the conviction and sentence. However, at the hearing of the appeal he abandoned the appeal against the conviction and only mitigated on sentence. It was his averment that he was remorseful and had undergone rehabilitation seeking the court's mercy he stated that he had a wife and two (2) children who solely depended on him. In his absence they were depending on his father who had since passed on. Consequently, he sought to serve a non-custodial sentence for the remaining term.

4. The state through learned counsel Mr. Machogu, urged the court to exercise its discretion in the matter.

5. The principles upon which an Appellate Court should interfere with a sentence were considered in the cause of *Kyalimpa Edward -versus- Uganda, Criminal Appeal No. 10 of 1995* where it held thus:-

“An appropriate sentence is a matter for the discretion of a sentencing Judge. It is the practice that as appellate court, this court will not normally interfere with the discretion of sentencing unless the sentence is illegal or unless the court is satisfied that the sentence imposed by the trial judge was manifestly excessive as to amount to an injustice”.

Also see *Ogalo s/o Owoura –versus- Republic 121 E.A.C.A 126; Mohamedali Jamu [1948] 15 E.A.C.A*

6. The maximum sentence for the offence of grievous harm is life imprisonment. The sentence imposed by the learned trial magistrate was therefore legal. However, it is important to note the appellant was a first offender. In sentencing him the court noted that he was not remorseful. Having been in custody for more than two (2) years he must have paid for his unlawful deed. This being a case of grievous harm the complainant may file a civil claim for damages. Taking that into consideration, pursuant to the provisions of **Section 354** of the **Criminal Procedure Code**, I hereby set aside the sentence imposed and substitute

it with **three (3) years** imprisonment.

7. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 17TH day of FEBRUARY, 2015.

L.N. MUTENDE

JUDGE