



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO. 239 & 240 OF 2012

JAPHET AYIENDA TOEL.....1ST APPELLANT

BENARD MWATA TOEL.....2ND APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

1. This is a criminal appeal by Benard Omwata Toel, the appellant herein. He was charged for grievous harm contrary to section 234 of the penal Code. The particulars were that on the 10th day of November, 2014 at Riabigutu sublocation in Masaba South District within Kisii County, jointly unlawfully did grievous harm to Evaline Sigara Nyapuku.
2. He pleaded not guilty to the charge. The appellant's trial proceeded in Keroka, in Senior Resident Magistrate's court. The appellant was convicted and sentenced to 6 years imprisonment. He now appeals. He has filed his six grounds of appeal: These are:

1. *I the appellant to be released on bond or bail on reasonable conditions pending the hearing and determination of this case.*
2. *A determination that I the applicant I am entitled to this constitution of Kenya.*
3. *Any further orders and or direction the honouralbe court considered a propeviate in the affidavit of JAPHET AYIENDA TOEL and on the following grounds:-*
 - a. *I he applicant I am entitled to secure protection of the law as provided under article 49 and 50 of this constitution of Kenya 2010.*
 - b. *I the applicant I am entitled to my rights and article 49(10h of the constitution of Kenya 2010.*
 - c. *I the accused I have a permanent home within the jurisdiction of this honourable court and I would not abscond.*
 - d. *I the accused shall not interfere in any way with investigation of this case.*
 - e. *That there is no special and or peculiar circumstances that bar the accused from being granted bail.*
3. However, on 2nd March, 2015, the state conceded to the appellant's appeal. The state counsel, Ms Clare, said she had express instructions from her senior, Mr. Imbali, to concede this appeal.
4. Accordingly, the appellant herein is set at liberty forthwith, unless otherwise lawfully held.
5. It is so ordered.

Dated and delivered at KISII this 20th day of March, 2015.

C.B. NAGILLAH,

JUDGE.

In the presence of:-

Appellants in person.

(absent) for the respondent

Edwin Mongare Court Clerk.