



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT HOMA BAY**

**CRIMINAL APPEAL NO. 119 OF 2014**

**(FORMERLY KISII HCCRA NO. 108 OF 2012)**

**BETWEEN**

**JOSEPH ODHIAMBO MBORI ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence in Criminal Case No. 218 of 2012 at the Principal Magistrates Court at Rongo, Hon. Z. J. Nyakundi, SRM dated on 24<sup>th</sup> April 2012)*

**JUDGMENT**

1. The appellant, **JOSEPH ODHIAMBO MBORI** was charged with and convicted on his own plea of guilty of the offence of causing grievous harm contrary to **section 234** of the ***Penal Code (Chapter 63 of the Laws of Kenya)***. He was sentenced to 5 years imprisonment. After conviction and sentence, he was released on bail pending appeal by the learned magistrate. He disappeared and was apprehended only when this court issued a warrant of arrest.
2. The facts of the offence were that on 18<sup>th</sup> April, 2012 at South Kamwango sub-location, North Kamagambo location within Migori District, one Mary Akinyi, the complainant, went to the appellant's house to demand a debt of Kshs. 200/= from his wife. On arrival, the appellant's wife referred the complainant to him and without any reason he attacked the complainant while armed with a blunt object. The complainant escaped and reported the matter to Kamagambo Police Station where she was issued with a P3 form. She suffered had swollen bruises on the face and complained of difficulties in her vision. The clinical officer who treated her at Rongo District Hospital recorded the injuries and noted that she had tenderness on the back and chest and classified the injury as main.
3. The appellant appealed against the conviction and sentence. At the hearing of this appeal, the appellant stated that he did not contest the conviction but that he wished the court to review the sentence as he was remorseful for what he had done.
4. Mr Oluoch, learned counsel for the respondent, opposed the appeal on sentence on the ground that the learned magistrate took into account relevant factors, did not take into account irrelevant factors and given the fact that the assault was unprovoked and a weapon used, the sentence of 5 years imprisonment was neither harsh nor excessive.
5. I have considered the facts of the case, the weapon used, the injuries inflicted and the unprovoked nature of the attack which are aggravating factors. That the appellant was a first offender and he is now remorseful are factors in his favour.
6. In all circumstances, I reduce the sentence to one year imprisonment.

**DATED, SIGNED AND DELIVERED** at **HOMA BAY** this 12<sup>th</sup> day of June 2015.

**D.S MAJANJA**

**JUDGE**

Appellant in person.

Mr Oluoch, Senior Assistant Director of Public Prosecutions, instructed by the Office of Director of Public Prosecutions for the respondent.