



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**CRIMINAL APPEAL CASE NO 53 OF 2013**

**[being an appeal from Bungoma CMCR No. 407 of 2013]**

JACKSON MKOME MUKABANA ..... APPELLANT

VERSUS

REPUBLIC ..... RESPONDENT

**JUDGMENT**

1. The Appellant herein Jackson Mkombe Mukabana was charged with the offence of grievous bodily harm contrary to Section 234 of the Penal Code. He pleaded guilty and was sentenced to 5 years imprisonment. The facts of the case were that on the 24th of February 2013 at Malaba town in Teso North within Busia County he unlawfully caused grievous harm to Marion Makungu.
2. Being aggrieved by the conviction and sentence the appellant preferred this appeal on the following grounds;
  - i. That at the time of the plea he was still in a state of confusion from being beaten by the mob and was not of sound mind.
  - ii. The police lured him into pleading guilty
  - iii. He is the sole bread winner of his family
  - iv. The sentence was too harsh in the circumstances.
3. At the hearing of the appeal the appellant admitted the offence and stated that he beat his wife as she had used their child's school fees though he found the sentence excessive.
4. The appeal was opposed by the state law office on the basis that the sentence was appropriate. The victim was deformed by the actions of the appellant and he does not deserve leniency.
5. It is clear that the Appellant was appealing against the sentence which he stated in his submissions was excessive. From the facts of the case to which the appellant pleaded guilty were that on the 26<sup>th</sup> of February 2013 at about 7 p.m. the appellant returned home while drunk, picked a quarrel with the wife, demanded that she leaves as he was fed up with her. He turned on her, kicked and gave her blows prompting the wife to flee. The following morning the wife returned at about 6.00 a.m. He lured her to the house picked a piece of wood, hit her all over inflicting upon her serious injuries on her hand and legs, and she was rescued by members of the public. The victim was hospitalized 3 days. The right leg was deformed as a result and there was inability to use the limp.
6. I have considered the appeal on sentence, the facts of the case and submissions. This being the 1st appeal court it has to consider the facts of the case and arrive at an independent decision. There is no doubt in my mind that the appellant acted in a barbaric manner towards the woman he lived

with as his wife. The trial magistrate considering the facts and mitigation before him and jailed the appellant for 5 years.

7. Under Section 234 of the Penal Code

***“Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”***

The P3 form relied upon gave injuries inflicted upon the complainant as follows

Upper limb – bruises on the right hand around the elbow joint.

Lower limb – right leg – obvious deformity seen, wound bleeding, marked tenderness, inability to use affected limb. X-ray showed fracture of tibia/fibula or right leg.

Left leg – bruised on the mid tibia

Assessment of injuries was given as grievous harm.

8. Having considered the facts of the case, injuries inflicted on the complaint, I find the trial magistrate’s sentence to have been appropriate and have no reason to interfere with the same.

Appeal is therefore dismissed.

**Dated at Bungoma this 22<sup>nd</sup> day of September 2015.**

**ALI-ARONI**

**JUDGE.**