



No. 7 of 2015

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYAMIRA

MISC. APPLICATION NO. 3 OF 2015

CLINTON OGWORO GETANDE.....APPELLANT

=VERSUS=

REPUBLIC.....RESPONDENT

JUDGMENT

This is a Criminal Appeal by an unrepresented appellant, *Clinton Ongworo Getande*. He was charged with an offence of maim contrary to **Section 234** of the **Penal Code**. The particulars were that on **2nd day of January, 2013** at Gekonge sub-location in Masaba South District within Kisii County jointly with others not before court unlawfully did maim to *Christopher Monene Otieno*.

He pleaded not guilty to the charge and was duly tried at **Keroka Resident Magistrate's Court**. He was duly convicted under **Section 215** of the **Criminal Procedure Code** and sentenced to serve 9 years imprisonment.

He has now appealed against the sentence.

He sets out the following grounds in his petition of appeal:-

1. *That I was convicted for nine years for the offence of maim.*
2. *That the trial magistrate was not lenient in pronouncing the years when the appellants' mitigation was eliminated.*
3. *That I am married and have two siblings.*
4. *That I have reformed for a short period.*
5. *That am convicted for nine years and will lead to separation with my family.*
6. *That I am a first offender hence be given a chance to liberty and exercise my duty as a Christian.*
7. *That may the court reduce a lesser punishment.*
8. *That my lord, I pray to be present at the hearing of this appeal and wish to be furnished with certified copy of proceedings.*

In essence he seeks to quash both the conviction and the sentence as his prayer although the appeal is on sentence only.

The appellant's submissions

He relied solely on his written petition as filed.

The Respondent's submissions

The respondent opposes the appeal. He urges the court to uphold sentence as the said sentence is commensurate with the offence with which he is charged. The offence is causing grievous bodily harm, contrary to **Section 234** of the **Penal Code**. The penalty for that offence is life imprisonment. The case went to full trial; the prosecution availed six (6) witnesses. The accused was found guilty of the said offence upon prosecution proving its case beyond reasonable doubt. It was **Criminal Case No. 86 of 2013**.

As to whether there was sufficient evidence to support the conviction, this court, as this the first appellate court, is enjoined to consider the entire evidence, evaluate it and reach an independent conclusion bearing in mind that that it neither heard nor saw the witnesses testify. **(See Okeno vs Republic [1972] E.A 32.**

In respect touching on sentence, this court will interfere with the exercise of such discretion by the trial court when the sentence is manifestly harsh or extremely lenient. The court will also interfere where the sentence is established that the sentence was illegal. **(See Griffith vs Republic 1981 KLR 121.**

FINDINGS AND CONCLUSION

This court finds that the trial, the conviction and the sentence meted out on appellant in **Criminal Case No. 86 of 2013** was proper.

Therefore the petition presented to this court be and is hereby dismissed.

It is so ordered.

Dated and delivered at Nyamira on this **19th** day of **October 2015**

C. B. NAGILLAH

JUDGE

In the presence of:

***Appellant in person* for the appellant**

***Malesi* for the respondent**

***Mercy* Court Clerk**