

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 157 OF 2010

SAMUEL LOKOSHO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant herein **Samuel Lokosho** had filed this appeal against his conviction and sentence by the learned Principal Magistrate sitting at Narok Law Courts. The appellant was first arraigned before the trial court on 19/4/2010. He was charged with the offence of **Assault Causing Grievous Bodily Harm contrary to Section 234 of the Penal Code**. The particulars of the charge were that:-

“On the 16th day of April 2010 at Three in One Bar Ntulele trading centre in Narok North District of the Rift Valley Province, unlawfully did grievous harm to Daniel Kinuthia Maina.”

The appellant pleaded guilty to the offence. The facts were duly read out and the appellant maintained his plea of guilty. The trial magistrate then convicted the appellant and after listening to his mitigation sentenced him to serve ten (10) years imprisonment.

Although the appellant had in his petition initially challenged his conviction when the matter came up before me on 28/10/2015 the appellant abandoned his appeal against his conviction. The appellant indicated to the court that he only wished to challenge his sentence which he termed as excessive.

Ms Ngovi, learned state counsel opposed the appeal against sentence.

I have carefully considered the submissions made by both sides. I have also carefully perused the record of the proceedings before the lower court. I note that the plea was properly recorded and facts were read out. The appellant entered an unequivocal plea of guilty. I find that he was properly convicted.

Although the sentence imposed upon the appellant was lawful I find that the learned trial magistrate failed to take into account certain relevant factors in imposing a sentence of ten (10) years without the option of a fine. Firstly, the appellant pleaded guilty thereby saving the court's time by avoiding an unnecessary trial. Secondly, the appellant was said to be a first offender. As such an alternative sentence like a fine would have been appropriate. I agree that a ten (10) year sentence was in the circumstances excessive. I therefore allow this appeal against sentence. I set aside the ten (10) year term of imprisonment imposed by the trial court. In its place I substitute a sentence of a fine of Kshs.30,000/- in default to serve five (5) years imprisonment. It is so ordered.

Read out and delivered in Nakuru this 23rd day of November 2015.

MAUREEN A. ODERO

JUDGE