

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO. 109 OF 2013

SIMON MBUTHIA WANGECHE.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal against sentence in Kangema Senior Resident Magistrate's Court Criminal Case No. 232 of 2010 (Hon. D.A. Orimba) on 19th July, 2010)

JUDGMENT

The appellant was charged with the offence of grievous harm contrary to section 234 of the Penal Code. It was stated in the particulars of the offence that on the 11th July, 2010 at Ngoini sub-location in Murang'a West District, within Central Province, the appellant unlawfully did grievous harm to Naftally Wangeche Mbutia.

The record shows that the appellant admitted the offence and the facts thereof were read over and explained him on 19th July, 2010. The learned magistrate therefore entered a plea of guilty and the appellant was thus convicted on his own plea of guilty. In his mitigation the appellant asked for mercy.

The learned magistrate sentenced the appellant to serve seven (7) years in prison. The appellant appealed against the sentence on the ground that it is harsh and excessive. When the appeal came up for hearing on 15th October, 2013, the appellant only asked for leniency saying that he is a first offender.

The state opposed the appeal and Mr Okeyo urged the court to uphold both the conviction and the sentence as the appellant was convicted on his own plea of guilty and sentenced in accordance with the law.

I have considered the appellant's case and the state counsel's submissions; the record shows, and the appellant does not deny, that the plea of guilty on his part was unequivocal. Section 234 of the Penal Code under which the appellant was charged imposes sentence of up to life imprisonment; under that section grievous harm is categorised as a felony. The learned magistrate imposed sentence of seven years imprisonment which in my view is reasonable in the circumstances. There is no reason, as far as I can see, to interfere with the sentence meted out against the appellant. In the circumstances this is an appeal which should be rejected summarily under **section 352(1)** of the **Criminal Procedure Code**; it is hereby so rejected and the court upholds the conviction and the sentence meted out against the appellant by the learned magistrate.

Dated, signed and delivered in open court this 14th day of January, 2014

Ngaah Jairus

JUDGE