

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 134 OF 2013

MOSES MUTISO KIVUVA.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal from the original conviction and sentence in Makueni Principal Magistrate's Court
Criminal Case No. 150 of 2013 by Hon. R. Yator Ag. SRM on 18/6/2013)

JUDGMENT

1. The Appellant was charged with grievous harm contrary to **Section 234** of the **Penal Code**. The particulars being that on the **15th** day of **March, 2013** at **Kivuti village, Kyusini sub-location** within **Makueni County** unlawfully did grievous harm to **Paul Kimanthi** by cutting his left hand fingers.
2. He was sentenced to **ten (10) years** imprisonment having admitted the charge. He now mitigates on sentence on grounds the he is remorseful. He is married and has children who depend on him.
3. As a first appellate court, I have the duty of reconsidering circumstances taken into consideration in reaching the decision to mete out sentence. (see ***Okeno versus Republic [1972] E.A. 32.***
4. In opposing the appeal, **Mrs Abuga** the learned State Counsel argued that the law provides for a maximum sentence of life imprisonment for such an offence therefore **10 years imprisonment** meted out was within the law.
5. The appellant herein was not a first offender. He had been convicted of an offence of creating disturbance, housebreaking and stealing. He was a repeat offender. He admitted the charge at first instance. The issue in contention was land. He claims in his mitigation that he had been evicted from the portion of land and he had nowhere to go.

The question to be posed is whether the sentence passed was proportionate to the offence committed?

6. Factors taken into consideration show that the appellant has the propensity of committing offences. However, the kind of offence committed entitles the complainant to claim compensation against the appellant. Taking into consideration all these it is apparent that the sentence imposed was excessive.
7. From the foregoing, it is necessary for this court to interfere with the sentence meted out. I therefore set aside the sentence passed and substitute it with **three (3) years** imprisonment.
8. It is so ordered.

DATED, SIGNED and DELIVERED at MACHAKOS this 19TH day of FEBRUARY 2014

L.N. MUTENDE

JUDGE