



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL APPEAL NO. 254 OF 2010

PETER MUTUKU MWETU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the conviction and sentence of Hon S.K. Mutai Resident Magistrate delivered on 14/09/2010 in Mutomo Resident Magistrate Criminal Case No. 66 of 2010)

(Before Hon. B. Thurairaja J)

J U D G M E N T

1. The Appellant, **Peter Mutuku Mwetu** was charged with the offence of **grievous harm** contrary to **section 234** of the **Penal Code**.

The particulars of the offence were that on the 25th day of April 2010 at around 8.00 p.m. at **Nguthinau village, Kaatene Sub-location, Mutha Location** in **Mutomo District** within the **Eastern Province**, unlawfully did grievous harm to **Muoki Mwetu**.

2. When the Appellant was arraigned in court, he pleaded not guilty. After a full trial, the Appellant was convicted and sentenced to life imprisonment.

3. The Appellant was aggrieved by both the conviction and sentence and appealed to this court. According to the Appellant's amended grounds of appeal, the appeal is on sentence only.

4. The record of the lower court reflects that the trial magistrate was a Resident Magistrate.

The jurisdiction of the Resident Magistrate is provided for in **Section 7 (2)** of the **Criminal Procedure Code** provides as follows:-

“Subject to subsection (1), a subordinate court of the first class may pass the following sentences in cases where they are authorized by law-

- (a) **Imprisonment for a term not exceeding seven years;**
- (b) **A fine not exceeding twenty thousand shillings;**

5. **Section 2** of the **Magistrate’s Court’s Act Cap 10 Laws of Kenya** provides that a Resident Magistrate’s Court of the 1st class means, *inter alia*, the Resident Magistrate’s Court. The Resident Magistrate’s Court is duly constituted when held by a Chief Magistrate, Senior Principal Magistrate, Principal Magistrate, Senior Resident Magistrate or Resident Magistrate (*See section 3* of the **Magistrate’s Courts Act Cap 10 Laws of Kenya**).

6. The trial magistrate erred in that he had no jurisdiction to sentence the Appellant to life imprisonment. Consequently, the sentence imposed was illegal.

7. I have considered the evidence in record. The complainant sustained severe injuries. The maximum sentence of seven (7) years which the trial magistrate had powers to mete out would however be reasonable.

8. With the foregoing, I set aside the sentence imposed by the trial magistrate and substitute the same with a sentence of seven (7) years. Orders accordingly.

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B. THURANIRA JADEN

JUDGE

Dated and delivered at Machakos this 19th day of February 2014.

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B. THURANIRA JADEN

JUDGE