



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NUMBER 153 OF 2012

JOSEPH MURIITHI NJIRU APPELLANT

VERSUS

REPUBLIC RESPONDENT

(Being an appeal from the original conviction and sentence in Runyenjes Criminal Case No. 869 of 2012 by Hon. J.P. Nandi, RM on 2nd October, 2012)

JUDGMENT

1. On 1st October 2012, the appellant appeared in court to plead to a charge of occasioning actual bodily harm to one Augustine Njiru on 28th September, 2012 contrary to **section 251** of the **Penal Code (Chapter 63 of the Laws of Kenya)**. He pleaded guilty and was remanded in custody to the next day when the facts would be read to him.
2. On 2nd October 2012, the prosecutor applied to substitute a new charge of causing grievous harm contrary to **section 234** of the **Penal Code**. The learned magistrate allowed the application and the charge was once again read to the appellant and he replied that the charges were true. The magistrate recorded a plea of guilty whereupon the facts were read to him. The accused confirmed that the facts were correct and the court convicted him on his own plea of guilty. He was sentenced to serve 15 years in prison.
3. He appeals against the conviction or sentence on the following grounds:
 1. *That he pleaded guilty to the offence.*
 2. *That the erred trial magistrate did not consider that the offence occurred while PW 1 was drunk.*
 3. *The trial magistrate did not consider that the said assault occurred due to domestic violence between the accused and his father.*
 4. *The trial magistrate did not consider that his wife died a few years ago and accused was left as a single caretaker of his two children.*
 5. *That the trial magistrate did not consider that the offence itself was an assault case and ended up convicting him on a maximum period of 15 years without considering his mitigation.*
4. The appeal is opposed by the state counsel submitting that the plea was unequivocal and the sentence was properly given.
5. It is apparent from the grounds of appeal that the appellant does not contest the guilty plea. He is concerned about the sentence. As is required of the first appellate court, I have appraised myself

of the record and material before the court. I am satisfied that the guilty plea was clear and unequivocal and warrants no interference.

6. According to the P3 presented, the injuries, recorded by the medical doctor who examined the complainant a day after the incident, were as follows; *“Multiple scalp bites and other bites and bruises on the face. Chest pain, clear airways, chest movement normal. Tender oedematous, Lt hand/forearm, Rt hand bruised on the ... joint, Lt hand had multiple bites. Lower limbs were normal.”* The doctor assessed the injuries as grievous harm.
7. According to the classification of injuries at **section 4** of the **Penal Code**, grievous harm means: *“any harm which amounts to maim, endangers life, or seriously or permanently injures health, or which is likely so as to injure health, or which extends to permanent disfigurement, or any permanent or serious injury to any external or internal organ.”* Harm, on the other hand, means, *“any bodily hurt, disease or disorder whether permanent or temporary.”*
8. In my view, the injuries did not rise to the seriousness of grievous harm. They were likely superficial in nature and in the absence of further evidence I would consider the injuries as “harm.” The appellant should have been charged with actual bodily harm contrary to **section 251** of the **Penal Code** which is the original offence he was charged with. In the circumstances, I reduce the charge to one of actual bodily harm and convict him accordingly.
9. As regards the sentence I have considered that the appellant was a first offender who has pleaded guilty. The sentence of 15 years is therefore reviewed and reduced to a term of 2 years imprisonment.

DATED, SIGNED and DELIVERED at EMBU this 30th day of April 2014

D. S. MAJANJA

JUDGE

Appellant in person.

Ms Ing’ahidzu, State Counsel, instructed by the Director of Public Prosecutions for the respondent.