



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL NO. 32 OF 2014

LESIT, J.

STEPHEN MWITHALIE.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

R U L I N G

1. The Appellant **STEPHEN MWITHALIE** was arraigned before the Maua Chief Magistrate's court with grievous harm contrary to section 234 of the Penal Code. He pleaded guilty to the charge and was sentenced to 3 years imprisonment.
2. Being aggrieved by the conviction and sentence he lodged his appeal in which he raised the following four grounds:
 - a. **The learned trial magistrate erred in law and in fact in convicting the appellant on an equivocal plea of guilt.**
 - b. **The learned trial magistrate erred in law and in fact in convicting the Appellant against the weight of evidence as disclosed by the reading of facts before the trial court.**
 - c. **The learned trial magistrate erred in law and in fact in giving the appellant an excessively long sentence.**
 - d. **The learned magistrate erred in law and in fact in failing to seek a probation officer's report before sentencing.**
3. When the appeal came up for hearing the Appellant abandoned his appeal against the conviction and pursued only his appeal against the sentence.
4. In his submissions the Appellant urged that he was jailed for 3 years and that he was requesting the court to reduce the sentence. He urged that he has reformed and will not repeat same.
5. Mr. Mulochi, prosecution counsel opposed the appeal and urged the court to dismiss it instead. The learned prosecution counsel urged that the court meted out a very lenient sentence.
6. I have considered Appellants appeal. I have considered Appellant's ground of appeal on sentence which is grounds 3 and 4 of the Petition, as a above. Sentence is the discretion of the trial court and an appellate court can only interfere with it if it is satisfied that it was unjustifiable in either being excessively harsh or too lenient or unlawful.

7. A person convicted of grievous harm is liable to imprisonment for life. The Appellant got 3 years imprisonment.

8. I looked at the injuries the Appellant inflicted on the complainant. The injuries were deep cuts on both legs. The complainant was hospitalized for about a month.

9. The learned trial magistrate wrote that she noted P3 form on the accused (Appellant) before sentence. I have checked the record and noted that the only P3 form was on the complainant.

10. The Appellant inflicted serious injuries on the complainant. The sentence imposed against him was lenient in the circumstances. His plea he has reformed is considered but dismissed as he was only jailed less than five months ago.

11. I find no merit in this appeal. The conviction is upheld and sentence confirmed.

12. The Appellants Appeal is dismissed in its entirety.

DATED SIGNED AND DELIVERED THIS 31st DAY OF JULY, 2014

LESIIT J

JUDGE.