

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRA NO.164 OF 2012

SOLOMON CHEPKESI PAPCHANG.....APPELLANT

VRS

REPUBLIC.....RESPONDENT

(Appeal arising from Hon. M. A. Nanzushi, Resident Magistrate

in

Kimilili Cr. No. 1093 of 2012)

JUDGMENT

1. Solomon Chepkesi Papchage, the Appellant was on 30th July, 2012 charged before the Resident Magistrate, Kimilili with the offence of Grievous Harm contrary to Section 234 of the Penal Code. It was alleged that on the 10th day of July, 2012 at Kongit Location in Mt. Elgon District within Bungoma County jointly with another not before Court, he unlawfully did grievous harm to Patrick Kaumba. He pleaded guilty to both the charge and facts whereupon he was sentenced to four (4) years imprisonment.

2. He was dissatisfied with the sentence and has appealed to this court. He contended in his Petition of Appeal that he pleaded guilty to the charge; that he was remorseful for the offence; that he should have been given a non-custodial sentence.

3. At the hearing of the appeal he submitted that he was a first offender; that on his conviction his wife run away and left his children with no one to take care of them and that therefore he should be considered. Mr. Kamau for the state submitted that the Appellant could not be considered for non-custodial sentence since the Probation Offenders Act allowed such sentences for those sentenced below three (3) years. He was of the opinion that the Appellant should have asked for a reduction of his sentence rather than a non-custodial sentence.

4. I have considered the submissions of the parties and the record. The Appellant's contention is that the sentence of 4 years was excessive; that he should have been given a non-custodial sentence; that he readily accepted his mistakes by admitting the offence; that he was remorseful and that he was a first offender. I have noted from the record of the lower Court that when given an opportunity to mitigate, the Appellant gave no mitigation.

5. I have considered that the offence for which the Appellant was convicted carries life sentence. He was only sentenced to four (4) years imprisonment. I have also noted the nature of the injuries inflicted on the complainant. The P.3 Form shows that the complainant was taken to hospital in an unconscious state, his clothing had blood stains all over; he had a cut wound on the parietal aspect of the head, he had swelling and inflamed reddish left eye; bruises on the left side of the face and on the back of his abdomen. He also had swelling and bruises on the left hand and on the elbow joint. The medical officer categorised the degree of injuries as grievous harm. The complainant was admitted for two (2) days in hospital.

6. These were serious injuries. They were life threatening. The offence carries a maximum sentence of life imprisonment. The Appellant failed to give any mitigation before the trial Court. In my view, the four

(4) years meted out to the Appellant was lenient in the circumstances of of this case. In this regard, I am satisfied that in sentencing the Appellant to 4 years instead of the maximum, the trial Court was alive to the fact that the Appellant had pleaded guilty to the charge and had thereby saved judicial time and that he was a first offender.

7. In the premises, I find the Appeal to be without merit and I hereby dismiss the same.

DATED and DELIVERED at Bungoma this 28th day of July, 2014

A. MABEYA

JUDGE