



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL NO. 26 OF 2014

LESIIT, J

ANTONY NJAGI OBADIAH.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

(An appeal from the Judgment and sentence in Chuka Criminal Case Number 540 of 2012)

RULING

1. The Appellant **ANTONY NJAGI OBADIAH** was charged and convicted of grievous harm contrary to section 234 of the Penal Code. He was sentenced to six years imprisonment on 18th December, 2013. Being aggrieved by the conviction and sentence the Appellant lodged this appeal.
2. The Appellant relied on supplementary grounds of appeal in which he pleaded that he was satisfied with the conviction and was only asking the court to reduce his sentence. He pleaded that he had communicated with his family and had sorted out their differences. He also pleaded that he had two children and that he was the sole bread winner.
3. Mr. Murage, prosecution counsel represented the Respondent in this appeal. Counsel opposed the appeal and in his submissions, he dwelt on the issue of identification. That was however, not challenged by the Appellant as when he stood to submit on his appeal he abandoned earlier grounds of appeal which challenged issues of identification.
4. The Appellant was sentenced to six years imprisonment for a charge of grievous harm contrary to section 234 of the Penal Code. Under the section a person convicted of grievous harm is liable to imprisonment for life.
5. What would determine the fairness of the sentence is a consideration of the injury inflicted on the complainant, the manner in which it was executed, the personal circumstances of the Appellant and finally the Appellants attitude towards the offence.
6. Before passing sentence, the learned trial magistrate observed;

“Sentence: The offence committed is quite serious. The accused does not seem to be remorseful. On 19.8.2013 the complainant was in court. I noted that he had a healed scar on the forehead. His left hand looked very weak. The accused assaulted him rendering his hand useless. He took the law into his hands. In order to deter other would be offenders; the accused is sentenced to 6 years imprisonment.”

7. PW6 described injuries suffered by the complainant as a fracture of the ulna bone on left hand

with tendons and blood vessels on same side damaged. The complainant also suffered a cut on the forehead injuries were assessed as grievous harm. In addition the learned trial magistrate observed that the complainant's left hand appeared very weak and useless as it could no longer be used.

8. The Appellant attacked the complainant as he tried to open his house. The complainant was unarmed. The Appellant was complaining that the complainant had falsely accused him of having cut his bananas. At the trial, the Appellant said nothing in his mitigation. The learned trial magistrate found him to have no remorse for the offence.
9. I have considered the Appellant's appeal. I find that the learned trial magistrate gave a lenient sentence to the Appellant especially given the fact the Appellant was not remorseful for the offence, the seriousness of the offence especially the fact the complainant has lost the use of his left hand. I will accordingly not disturb the sentence.
10. In the result the Appellant's Appeal fails for lack of merit. The conviction is upheld and sentence confirmed. The Appellant's appeal is dismissed.

DATED SIGNED AND DELIVERED THIS 24th DAY OF JULY, 2014

LESIIT J.

JUDGE