

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CRIMINAL APPEAL NO.91 OF 2013

CHRISTIAN ODONGO.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(An Appeal arising out of the sentence in Busia CMC No.1831 of 2012 delivered by I.T. Maisiba on 19th November 2013)

J U D G M E N T

1. In arguing this Appeal against sentence only, the Appellants Counsel adopted the arguments he made in Busia High Court Criminal Appeal No.90 of 2013 **Patrick Juma Araba –vs- Republic**. This Court has today rendered its decision in that Appeal and makes its decision available to the Appellant herein. My views therein on the question of compensation has a bearing to my decision here.

2. The sentence of 5 years imposed on the Appellant for an offence of Grievous Harm contrary to Section 234 of The Penal Code is lawful. The maximum possible sentence is a life imprisonment. The victim sustained, amongst other injuries, 2 compound fractures. The injuries are no doubt serious. In passing sentence, the Learned Magistrate observed that the offence was serious and called for a deterrent sentence. While I may have been more lenient than the sentencing Court, I cannot say that the sentence of 5 years was manifestly excessive.

3. Was this a suitable case for an order for compensation to be made? The injuries sustained by the victim were extensive and serious. The medical evidence in respect to the injuries was in the case summary (Exhibit 1) and P3 Form (Exhibit 2). There was no medico-legal report on the exact extent of the injuries or its immediate, medium or long term effects. It would have been impossible for the Trial Court to make a fair award without carrying out a separate inquiry on quantum. This would not be a suitable case to order for compensation. Both the Appellant and the victim will be better served if they ventilated the question of compensation in a civil Court.

4. For reasons given, I dismiss the entire Appeal.

F. TUIYOTT

J U D G E

DATED, DELIVERED AND SIGNED AT BUSIA THIS 17TH DAY OF JULY 2014.

IN THE PRESENCE OF:

KADENYI.....COURT CLERK

KELWON FOR STATE

WANYAMA H/B FOR ASHIOYA FOR APPELLANT