REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL APPEAL NO 121 OF 2012

Appeal from the conviction and sentence by the Acting Senior Principal Magistrate at Mandera in Criminal Case No 404 of 2012, (C.A.S Mutai).

MOSES ASILA AMAYAMU……...APPELLANT

Versus

REPUBLIC……..RESPONDENT

JUDGEMENT

Moses Asila Amayamu (the Appellant) was charged with grievous harm contrary to section 234 of the Penal Code. The offence was alleged to have been committed on 22nd November 2012 at Buruburu Village in Mandera Township in the same County and the victim is one Issa Walu Ibabaya. The appellant was arraigned in court on 3rd December 2012. He pleaded guilty to the charges and admitted the facts read and explained to him.

Briefly, the facts show that the appellant visited the complainant at his home and a quarrel ensued. The appellant drew a hammer and hit the complainant on the head seriously injuring him. The complainant fell down unconscious while the appellant continued kicking him. Neighbours intervened and the appellant escaped. The matter was reported to the police and the appellant was apprehended and charged. The complainant was treated at Mandera District Hospital. The clinical findings were that the complainant had suffered multiple cut wounds on the head and a depressed cut wound on the scalp with profuse bleeding. The complainant also had injuries on the left upper arm and swollen lower limbs. The doctor classified the injuries as grievous harm.

Upon the appellant pleading guilty and admitting the facts the trial magistrate convicted him and sentenced him to serve twelve years imprisonment. He is now aggrieved by the conviction and sentence and has preferred this appeal. My reading of the grounds of appeal the appellant is relying on reveals that he is challenging the conviction and sentence because of what he says is the lack of investigations. He is also claiming that the complainant cannot have been grievously injured because he was performing his normal duties the following day and that the evidence is false.

From the submissions it appears that the appellant is only challenging the sentence which he terms as

excessive. He has submitted that the attack on the complainant who was his friend was not pre-meditated; that he attacked him in the heat of passion following a disagreement on a business deal; that he was provoked by the complainant who attacked him first and in a feat of anger he picked whatever he could lay hands on and started hitting the complainant. He says he did not realise what he was doing until he saw people running towards him; that he ran away fearing for his life and that he had intended to reconcile with the complainant but the police took him to court. He says he is remorseful and is asking the court to consider reducing the sentence as well as giving him a non custodial the sentence. He seems to be asking for an acquittal as well.

The appeal has been opposed with the learned State Counsel submitting that the appellant had admitted the offence and was sentenced on his own plea of guilty; that under section 348 of the Criminal Procedure Code this court cannot interfere with the conviction unless there are illegalities; that the appeal is vexatious, frivolous and abuse of this court's process and it lacks merit; that the appellant was charged under section 234 of the Penal Code whose penalty is life imprisonment but he was sentenced to twelve years after the court considered his mitigation. Counsel further submitted that the matter did not go for trial so the appellant cannot claim that the evidence was false.

Upon my reading of the grounds of appeal and the handwritten submissions by the appellant, it is my view that the appeal lacks merit. The appellant admits to having attacked the complainant whom he refers to as his friend in a feat of anger. The injuries sustained were classified as grievous harm. The appellant admits to having continued hitting the complainant until neighbours intervened and he stated that he did not know what he was doing. He says he is remorseful and the court ought to acquit him. He seems confused as to what he wants this court to do. Is it to acquit him, to reduce the sentence or to give him a non custodial sentence?

The law is clear on appeals emanating from a plea of guilty. **Section 348** of the Criminal Procedure Code provides thus:

> **No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court except to the extent or the legality of the sentence.**

Section 234 of the Penal Code prescribes the sentence for the offence of grievous harm and states as follows:

> **Any person who unlawfully does grievous harm to another person is guilty of a felony and is liable to imprisonment for life.**

The appellant was sentenced to twelve years imprisonment. Sentencing is the discretion of the trial court. A court sitting on appeal should not interfere with that discretion unless it is shown that in passing the sentence the trial court took into account an irrelevant factor or failed to take into account a relevant factor or that a wrong principle was applied or that the sentence itself is so harsh and excessive that an

error in principle must be inferred (**see Shadrack Kipkoech Kogo v. R, Eldoret Criminal Appeal No. 253 of 2003**)

Having carefully considered the grounds of appeal and rival submissions it is my view that this appeal has no merit. The appellant admits attacking the complainant in a feat of anger and seriously injuring him. Had the neighbours not intervened, there is no telling what this would have led to. Attacking another person in a blinding rage cannot be excused and in my view a sentence of twelve years is not excessive given that the maximum sentence under section 234 is life imprisonment. I have no reason to interfere with the sentence of the trial court.

In conclusion, I hereby reject the appeal and dismiss the same. The appellant will continue to serve the sentence of twelve years as imposed by the trial court. I make orders accordingly.

S.N. MUTUKU

JUDGE

Dated this 4th June 2013

Signed and delivered in open court this 10th day of June 2013.