



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPEAL NO. 27A OF 2011

LESIT, J

BAABU MIRITI.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT.

(From the original conviction and sentence in Criminal Case No. 504 of 2010 in the Chief Magistrate's Court at Meru by R. M. Kimmingi Chief Magistrate)

JUDGEMENT

1. The Appellant was convicted of one count of grievous Harm contrary to section 234 of the Penal Code and sentenced to 8 years imprisonment. I noted that the Appellant had been convicted with one KENNETH KIMATHI who does not seem to have filed any appeal.
2. The Appellant was aggrieved by the sentence and therefore filed this appeal. He has pleaded eight grounds in his filed petition namely:
 - i. **That I pleaded guilty of the offence.**
 - ii. **I did not waste the precious time of the court.**
 - iii. **That I have sworn and touched my both ears with my hands that I'll never go back again to the field of alcohol.**
 - iv. **That all that happened between us was caused by drunkenness which now feels to hate it and I swear never again be seen being drunk as experience has already taught me.**
 - v. **That this honorable court be pleased to set aside alter or reverse the sentence awarded by the lower court.**
 - vi. **That I pray for leniency for forgiveness as I am so remorseful for the deed.**
 - vii. **That the sentence meted on me is excessive and too harsh.**
 - viii. **That the honorable high court gives any orders as the interest of justice will demand.**
3. In his submissions in court the Appellant urged the court to find he was remorseful for the offence

that he had reformed, that he had undergone Carpentry Training with which he could be useful to the society. He urged that drunkenness was the reason for the offence and pleaded never to go back to same.

4. The State opposed this appeal. Ms Mwangi, learned State Counsel represented the State in this appeal. Counsel urged that the Appellant was sentenced to 8 years imprisonment and that it was deterrent sentence
5. I have considered the Appellants appeal against the sentence. Looking at the offence I note that the doctor classified cuts on the scalp measuring 5 cm, on left cheek measuring 6 cm, on both legs measuring 5 cm and blunt injury to the right eye as maim. With due respect to the doctor, there is a great measure of exaggeration. There was no injury of a permanent nature or an injury capable of creating an inability on the complainant. The complainant suffered deep cut or lacerations. The classification is not justified in my view.
6. The learned trial magistrate sentenced the Appellant and his co-accused to 8 years imprisonment. The court noted.

The gravity of the offence for which each accused has committed (sic) and each accused appear not to be remorseful. Accused persons have no fixed abode. None custodial sentence is also not recommended. The court considers (sic) a deterrent custodial sentence suitable and sentence each accused to 8 years imprisonment.

7. From the statement of Learned trial magistrate it appears that the sentence was informed by report from Probation and the classification of the injury complainant suffered according to the doctors. The latter was a gross exaggeration. The Probation Officer's Report on its part declared the Appellant and his co-accused street urchins or homeless. None of these would justify a deterrent sentence.
8. I find the learned trial magistrate was influenced by the two reports and from my observations above the same led to misdirection on the sentence suitable and to a harsh sentence. For the above reason I allow Appellants appeal against sentence and set it aside. In substitution I sentence Appellant to five years imprisonment as attack was unprovoked and the motive was unknown.
9. For Appellant's co-accused under ss354, 362 and 364. I set aside sentence of 8 years imprisonment imposed upon him, Kenneth Kimathi and in substitution impose a sentence of 5 years imprisonment.
10. Those are the orders of the court.

DATED SIGNED AND DELIVERED AT MERU THIS 30TH DAY OF OCTOBER, 2013.

J. LESIIT

JUDGE1.