

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPEAL NO. 26A OF 2011

LESIIT,

JOHN MWENDA IKAMATI.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT

(FROM THE ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL CASE NO. 3261 OF 2009 IN THE PRINCIPAL MAGISTRATES COURT AT MERU BY J. N. NYAGAH S.P.M.MAGISTRATE)

JUDGEMENT

1. The Appellant was convicted of grievous harm contrary to section 234 of the Penal Code. He was sentenced to 10 years imprisonment. The Appellant was aggrieved by the sentence and filed this appeal dubbed “mitigation Appeal”. He raises three grounds as follows:
 1. **That in light of the fact that I am a first offender and being both remorseful and apologetic for the offence thereof and seeing that I am orphaned and now the only one the family members were looking to for subsistence and in that I have reformed I meekly pray for a non-custodial sentence such as a peace keeping bond as I have nobody to cater for my surety.**
 2. **That this court grants me pardon and acquittal please.**
 3. **That this esteemed court lessen the sentence altogether. Or rather do as otherwise deems fit in the court’s countenance.**
2. When the appeal came up for hearing the Appellant urged the court to reduce his sentence. He gave his personal circumstances as reason for the appeal urging that his father died and that since his incarceration his brother had chased away his wife and children from home.
3. Ms. Muriithi was the State Counsel appearing for the State. The learned counsel opposed the appeal and urged that the sentence was lenient since the offence carried life imprisonment as the maximum sentence.
4. I have considered this appeal. The Appellant was convicted of grievous harm and sentenced to 10 years imprisonment. It is clear from the evidence before court that the Appellant was with his brother when both attacked the Complainant. It is true as the Appellant urged that it was his brother who cut off the complainants left forearm at the wrist joint. However, the Appellant also caused the complainant serious cuts on the head, shoulder and right hand. That does not make the offence any less serious as both acted with a common purpose.
5. A person convicted of grievous harm is liable to life imprisonment. The Appellant was sentenced to 10 years imprisonment. The sentence was very lenient for reason the Appellant is not remorseful for the offence and seems to justify it on grounds the more serious injury suffered by the complainant was caused by his brother. His brother apparently was not charged together with him. That notwithstanding I find that sentence is lenient. The complainant was maimed.

He had not provoked the attack in any way, neither was he armed. I find no merit in this appeal and the same is dismissed accordingly.

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

J. LESIIT

JUDGE.