



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL NO. 124 OF 2009

JEREMIAH MWITHALIEAPPELLANT

VERSUS

REPUBLICRESPONDENT

(From original conviction and sentence in criminal case No.3162 of 2008 of the Principal Magistrate's Court at Maua)

J U D G M E N T

The appellant JEREMIAH MWITHALIE was charged with an offence of grievous harm contrary to Section 234 of the Penal Code.

The appellant pleaded not guilty to the charge. Upon hearing of the case the trial court convicted the appellant and sentenced him to serve 20 years imprisonment.

The appellant being aggrieved by the conviction and sentence preferred this appeal. When the appeal came up for hearing the appellant abandoned the appeal against conviction and pursued the appeal against sentence. The appellant is seeking his sentence to be reduced on the grounds set out in his petition of appeal being as follows:-

- 1. That, the learned trial Magistrate erred in law in failing to observe that Section 72(3) of the Constitution was flouted.***
- 2. That, the learned trial Magistrate erred in law when he failed to comply with Section 198(1) of the CPC Laws of Kenya.***
- 3. That the learned trial Magistrate erred in law and facts in failing to summon vital witnesses mentioned in the trial case for a just decision to be reached.***
- 4. That the trial magistrate erred in law and facts in failing to observe that the prosecution witnesses gave contradictory and conflicting testimonies.***
- 5. That, the learned trial Magistrate erred in failing to observe that the prosecution witnesses' did not bear fruits hence dismissing my unsworn defence without giving any cogent reasons for the same.***
- 6. that, the grounds herein have been drafted without the certified copies of the lower court***

proceedings, I pray to be served with the same to enable me construct more firm grounds of appeal.

The appellant did not in this appeal challenge the conviction but sentence which he averred was manifestly excessive.

Mr. Ongige, learned State counsel opposed appellant's appeal against sentence averring the injuries inflicted upon the complainant were serious and that the sentence provided for such an offence is life sentence. He submitted the sentence of 20 years was lenient.

S Section 234 of the Penal Code provides:-

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

The appellant caused serious injuries to the complainant. The lower court noted the injured hand was lame. The degree of injury sustained by the complainant according to the P3 form(exhibit 1) is mainm.

The appellant refused to mitigate at the trial court. On appeal he asked this court to reduce the sentence. I have considered the facts of the case and the relevant provision of the law and find that the sentence imposed was within the law though excessive in the circumstances. The sentence imposed upon the appellant is therefore reduced from 20 years to 14 years. The appellant to serve 14 years with effect from the date of conviction.

In the result appeal on sentence succeeds to that extent.

J. A. MAKAU

JUDGE

DATED, SIGNED AND DELIVERED AT MERU THIS 28TH DAY OF OCTOBER, 2013

Delivered in open court in the presence of:

1. Mr. Ongige for the State.

J. A. MAKAU

JUDGE