



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**CRIMINAL APPEAL NO. 80 OF 2010**

**BETWEEN**

CHRISTOPHER GIKUNDI KABERIA.....APPELLANT

**AND**

REPUBLIC.....RESPONDENT

**JUDGEMENT**

The appellant in this matter was convicted by the Senior Resident Magistrate in Maua Senior Principal Magistrate's Court criminal case number 3562 of 2008 and sentenced to ten (10) years imprisonment. He had been charged of causing grievous harm contrary to **section 234 of the Penal Code**. The particulars were that the appellant had on 5<sup>th</sup> October 2008 at Kanuni Location in Igembe District within Eastern Province unlawfully caused grievous harm to Gladys Karambu. He pleaded not guilty, was tried and convicted of the offence charged.

He was aggrieved by the said conviction and sentence, and filed the current appeal in person. In the appeal, he listed several grounds. At the hearing of the appeal, the appellant was unrepresented. He asked the court to consider his appeal, particularly as concerns the sentence. At the end he asked for the courts mercy and forgiveness.

The state, represented by Mr Ongige, opposed the appeal. Mr Ongige asked the court to consider that the injuries caused on the complainant were severe and the complainant was likely to be traumatised for the rest of her life. He urged the court the court not to interfere with the sentence as it was deterrent enough.

This being a first appellate court I am bound to follow the guidelines set by the Court of Appeal in ***Kinyanjui vs. Republic (2004) 2 KLR 364***, with respect to criminal appeals. It was said that the first appellate court must look at the evidence presented before the trial court afresh and re-evaluate and re-examine the same, and thereafter reach its own conclusions. The first appellate court must bear in mind that it did not have the opportunity to see the witnesses as they testified. The court should also look at the grounds of appeal put forward by the appellant. I also remind myself of the point made in ***Buru vs. Republic (2005) 2 KLR 533*** and ***Republic vs. Oyier (1985) KLR 353***, that a first appellate court will not normally interfere with the finding of a lower court on the credibility of witnesses unless it is shown that no reasonable tribunal could make such findings.

I have perused the record of the lower court. It is my view that the evidence was overwhelmingly against the appellant. It was direct and damning. There is nothing that can be faulted about it. There were eyewitnesses who were present when the appellant so severely brutalised the complainant and who intervened to save the complainant's life. The complainant sustained severe injuries and was in hospital for a long time.

The appellant has invited me to consider reducing the sentence of ten years imprisonment. The penalty for causing grievous harm as defined in **section 234 of the Penal Code** is imprisonment for life. The court has great discretion on the matter. The injuries inflicted on the complainant were life threatening. I note that she was in hospital for over one month. The trial court was no doubt lenient on the appellant. I find no basis upon which I can interfere with the sentence imposed.

The upshot of this is that the appeal herein is not allowed. The conviction of the appellant of causing grievous harm is upheld, and the sentence of ten years imprisonment is confirmed. The appeal is accordingly dismissed.

**DATED,SIGNED AND DELIVERED AT MERU THIS 24<sup>TH</sup> OCTOBER, 2013**

**W MUSYOKA**

**JUDGE**