

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

CRIMINAL APPEAL NO. 33 OF 2010

LESIIIT, J

***(Being an appeal from CM Court Maua from the
Judgment and sentence of S. Mwendwa SRM***

delivered on 21st May, 2009.)

PETER KALUNGE M'MUKIRA.ACCUSED

V E R S U S

REPUBLIC.....PROSECUTOR

JUDGEMENT

1. The Appellant was convicted of causing grievous harm contrary to section 234 of the Penal Code. After a full trial the court found him guilty of the offence and sentenced him to 15 years imprisonment. Being aggrieved by the conviction and sentence he filed this appeal.
2. When this appeal came up for hearing the Appellant abandoned his appeal against the conviction and pursued his appeal against the sentence. In his submission the Appellant urged the court to note that the complainant was his brother and that he wanted to take away the whole land from him. He urged that the Appellant is the one who attacked him first and that he cut him on the head and the hand as a result of which he lost his mind and hit him back. He asked the court for forgiveness and leniency and stated that he would not repeat such an offence again, that he had reformed and that he wanted to go back to the society to marry and settle down.
3. This Appeal was opposed Ms Mwangi learned stated counsel who urged that the sentence was very lenient because the offence attracts life imprisonment and yet the Appellant was sentenced to 15 years imprisonment. Counsel also urged that the Appellant was not remorseful. The learned state counsel urged that the Appellant chopped off the complainant's hand rendering him desolate as he earned a living through casual labour which he could no longer perform.
4. I have considered this appeal. I have perused the proceedings of the lower court. Regarding the motive of the attack it is clear from the record that the issue was not land but the fact that the Appellant was annoyed that the complainant had reported him to the police after the Appellant stole his cow. I noted that the motive for this attack was to silence the complainant so that he does not pursue the case he reported to the police. The Appellant was found guilty of chopping off the complainant's hand at the wrist joint. From the testimony of the complainant and eye witnesses that amputation was as a result of the accused cutting the complainant on the hand three times. It is clear from the circumstances that the reason for the attack was not provocation that the Appellant submitted before me but it was in execution of a premeditated attack to cause grievous harm to the complainant.
5. I have noted that both in his statement of defence before the trial court and in his submission

before this court that the Appellant does not deny that he is the one who cut off the complainants hand. He claims that it was in self defence after the complainant cut him. The Appellant also had injuries which were noted by the Investigating Officer PW4. The Appellant said that he had been treated and discharged. I am however satisfied from the proceedings that the Appellant was the aggressor and that he attacked the complainant suddenly and from behind and that the complainant did not fight back. Given the circumstances of the case I am satisfied that the imprisonment of 15 years imprisonment is neither excessive or harsh. I therefore find no merit in this appeal and dismiss it accordingly.

DATED SIGNED AND DELIVERED AT MERU THIS 23rd DAY OF OCTOBER, 2013.

J. LESIIT

JUDGE