



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
CRIMINAL APPEAL NO 204 OF 2007

SOLOMON MUTIRIA.....APPLICANT

VS

REPUBLIC.....RESPONDENT

JUDGMENT

INTRODUCTION

The Charge

[1] The Appellant was charged with causing Grievous Harm Contrary to Section 234 of the Penal Code. He was convicted on his own plea of guilty and sentenced to life imprisonment. He was aggrieved by the sentence and filed this appeal.

THE APPEAL

Arguments by the Appellant

[2] The appeal herein carries three significant grounds that;

(a) That the sentence was manifestively (sic) excessive in the circumstances.

(b) The trial magistrate erred in not considering the preferred mitigation by the Appellant.

(c) That I request to be granted non-custodial sentence.

[3] The Appellant argued his appeal and insisted that the sentence was harsh for he had not committed the offence. He asked the court to recheck the record and order a retrial.

Arguments by the State

[4] M/S Muriithi for the state apposed the appeal and submitted that the offence of grievous harm carried life imprisonment and that is what was meted out by the trial magistrate. The sentence was a legal one and was not excessive.

[5] She continued to argue that mitigation by the Appellant was considered and that is clear from the record. Indeed, the trial magistrate noted that the accused was not remorseful.

[6] She was emphatic that the offence of grievous harm could not be attended to by a non-custodial sentence. She insisted that the plea was properly taken and the conviction was fair. Enough evidence was adduced to support the conviction by the trial magistrate.

COURTS DETERMINATION

[7] I have perused the record and the plea was taken as prescribed in law and particularly in **ADAN V REPUBLIC**. The language used was Tharaka which the Appellant understood. Facts were also read and he admitted them to be true. The plea was unequivocal. This appeal is, therefore, on the sentence only. The sentence imposed was the maximum as prescribed in Section 234 of the Penal Code- Life Imprisonment. The facts as rendered are that on 21.10.2007 at 7.00am the Appellant went to the home of the complainant Sabella Kanyua and was given porridge. The Appellant left and then came back with a panga and cut the complainant on the head and both hands. The complainant was completely maimed as she lost both hands.

[8] The circumstances of the commission of the offence paint a picture that the Appellant acted without any provocation whatsoever. The trial magistrate noted that the Appellant did not show any remorse for the inhuman act. The injury was serious. The trial magistrate exercised discretion in passing the sentence, except, discretion should be exercised judicially and upon defined legal principles and not capriciously or upon other human traits. The trial magistrate took into account the gravity of the offence that was serious and also lack of remorse on the part of the Appellant. Those are some of the factors in mitigation which the trial magistrate considered, but I doubt whether the trial Magistrate considered that life sentence was the maximum sentence and the Appellant was the first offender. The trial magistrate was solely pre-occupied with deterrence of the Appellant and others from committing similar offences which he said were become common in the area. He forgot to adhere to the legal principles which were to cumulatively guide exercise of discretion. That failure was an error in principle and it affected the exercise of discretion. In the circumstances, I find the sentence was harsh. I substitute the sentence herein for a term of imprisonment of 20 (twenty) years. It is so ordered.

Dated, signed and delivered in open court at Meru this 22nd day of October, 2013

F. GIKONYO

JUDGE