



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO 58 OF 2012**

**PAUL KINGORI MWANGI .....APPELLANT**

**Versus**

**REPUBLIC .....RESPONDENT**

*(arising from the judgment of Hon. B.M.Kimtai, Resident*

*Magistrate in Nanyuki Criminal Case No.30 of 2012)*

**JUDGMENT**

1. The appellant herein was charged with the offence of Causing Grievous Harm contrary to section 234 of the Penal Code. The particulars of the offence were that on 10th day of July 2011 at Mitero village in Laikipia County within the Republic of Kenya unlawfully did grievous harm to DUNCAN MUREITHI GITAHU.
2. He pleaded not guilty and was tried convicted and sentenced to ten (10) years imprisonment.
3. Being aggrieved by the said conviction and sentence the appellant filed this appeal and in his home made grounds of appeal raised the following grounds:

***(1) The trial Magistrate erred in law and in fact by failing to observe that none of the prosecution witnesses was an eye witness.***

***(2) No dagger was produced as an exhibit***

***(3) The prosecution evidence was based purely on hearsay***

4. ***The ten (10) years sentence is rather excessive.***

1. By a chamber summons filed on 26th February 2013 the appellant moved the court for an order that the applicant be allowed a fine in substitution of ten (10) years and was granted on the fact that the applicant has served almost one year in prison and that the same is a first offender.
2. When this matter appeared before me Mr. Njue appeared for the State and the appellant appeared in person and the appellant submitted that he would like to abandon his appeal on conviction and have the sentence reversed by the court.
3. This being a first appeal the court is expected to reassess the evidence tendered before the trial court and to come to its own conclusion on the same.
4. Since this appeal is only on sentence it should be noted that the maximum sentence provided for under section 234 is life imprisonment whereas the appellant was sentenced to ten (10) years imprisonment. However I have looked at the appellant's defence before the trial court where he stated that all he knows is that the complainant sold him some liquor which he took and later

- proceeded home and slept and the following day he heard that the complainant had been stabbed.
5. I am therefore of the considered view that the defence of insanity due to intoxication should have been available to the appellant herein.
  6. I therefore allow the appeal on sentence and set aside the sentence herein and substitute the same with a sentence of imprisonment for a period of five (5) years from the date of conviction.

Dated at Nyeri this 17th day of October 2013.

J. WAKIAGA

JUDGE

Read in open court in the presence of the above named.

J. WAKIAGA

JUDGE