

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL APPEAL NO 206 OF 2011

DAVID NDWIGA NYAGA.....APPELLANT

VERSUS

REPUBLIC.....PROSECUTOR

From original conviction and sentence in Criminal Case No. 176 of 2010 at Chief Magistrate's Court at Embu by Hon. L.K. MUTAI - PM on 23/11/2011

JUDGMENT

DAVID NDWIGA NYAGA the Appellant was charged and convicted of Grievous Harm Contrary to Section 234 Penal Code. He was then sentenced to four (4) years imprisonment. He filed this appeal against conviction and Sentence citing several grounds. However when the appeal came for hearing today (16/10/2013) he abandoned his appeal against conviction. He told court he is due for release on 4/3/2014.

Ms Ingahizu the Learned State Counsel was not opposed to the appeal against sentence.

The complainant in this case is the Appellant's son whom he says is aged 11 years now. He assaulted him in the name of disciplining him for refusing to go to school. I have confirmed from the record that the conviction was based on sound evidence. The appellant has about six (6) months left to complete sentence. I do find that he has learnt his lesson for the period he has been behind bars. He will get an opportunity to reconcile with his family.

I therefore set aside the sentence of four (4) years and substitute it with the period served. To that extent only does the appeal succeed. The Appellant to be released unless otherwise held under a separate warrant.

Delivered, signed and dated at Embu this 16th day of October 2013.

H.I. ONG'UDI

JUDGE

16/10/2013

In the presence of:

Miss Ingahizu – State

Appellant- Present in person

Mutero/Kirong- CC