



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**  
**[Coram: Fred A. Ochieng JJ]**  
**CRIMINAL APPEAL NO. 111 OF 2012**

**JACKSON LIBESA ::: APPELLANT**

**=VERSUS=**

**REPUBLIC ::: RESPONDENT**

***{Being an appeal from the Judgment of Hon. G. Mmasi, (SRM) dated & delivered on 21st November, 2011 at the Chief Magistrate's Court – Eldoret in Eld. CMCRC No. 2714 of 2011}***

**JUDGMENT**

The Appellant, **JACKSON LIBESA**, was convicted for the offence of Causing Grievous harm Contrary to Section 234 of the Penal Code. He was then sentenced to 7 years imprisonment.

His appeal to this court is largely a plea for a reduction of the sentence. **Mrs. Orina**, the learned advocate for the Appellant, told this court that the Appellant has been traumatized because he was already been in custody for two (2) years.

The Appellant suggested to this court that because the law does not stipulate a minimum sentence for the offence he was convicted for, the court should find that he has already been punished sufficiently.

He also drew the court's attention to the fact that his wife and his 2 children, depended only upon him, for their welfare.

If this court was not minded to reduce the sentence to the period already served, the Appellant asked that the court should consider handing down a non-custodial sentence.

But **Mr. Mulati**, learned state counsel, submitted that there was no justification for any reduction in the sentence. The said sentence was described as lawful.

Secondly, because the maximum penalty prescribed was Life Imprisonment, the Respondent submitted that that was another reason why the sentence herein should not be reduced.

I have perused the record of the proceedings. I note that the Appellant was the step father of the

Complainant. He was not the biological father of the Complainant. He was the husband of the Complainant's mother, whom he married after she had got the Complainant.

The Appellant beat up the Complainant because she cried at night. As a result of the beatings, the Complainant sustained a fracture of her left pelvic bone.

The case before me is a tricky one. I say so because the Complainant is the step daughter of the Appellant. They lived in the same house prior to the Appellant's arrest.

If the Appellant was to be given a non-custodial sentence, there might arise logistical problems.

Meanwhile, the sentence of 7 years imprisonment was lawful.

Section 234 of the Penal Code does not specify a minimum sentence for the offence of Grievous harm. But it provides for the Maximum sentence, which is Life Imprisonment.

Although the Appellant expressed remorse for his actions, I noted that in his defence, he actually denied any nexus between him and the Complainant's mother. He said that he had another family. As far as he was concerned, the lady who is the Complainant's mother had only gone to his house to buy firewood! He therefore had no idea why that lady (P.W.2) incriminated him.

If that line of defence was factually accurate, this court would have expected the Appellant to challenge his conviction. But he decided to only challenge the sentence. That therefore implies that the Appellant's earlier rejection of P.W.2 was not legitimate. In the event, it calls into question the legitimacy of the Appellant's current expression of remorse.

I find no reason to warrant an interference with the sentence. The appeal is therefore dismissed.

**DATED, SIGNED AND DELIVERED AT ELDORET,**

**THIS 19TH DAY OF NOVEMBER, 2013.**

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**FRED A. OCHIENG**

**JUDGE.**