



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MERU
CRIMINAL APPEAL NO. 251 OF 2009

LESIT, J

ASHFORD KIMAITA MURIUNGI.....APPELLANT

V E R S U S

REPUBLIC.....RESPONDENT.

***(FROM THE ORIGINAL CONVICTION AND SENTENCE IN CRIMINAL C
ASE NO. 1339 OF 2009 IN THE CHIEF MAGISTRATES COURT AT MERU)***

JUDGEMENT

1. The Appellant pleaded **ASHFORD KIMAITA MURIUNGI** was charged with Grievous Harm contrary to section 234 of the Penal Code. He was alleged to have fractured 3 fingers of his mother on 26th August 2009. The appellant was found guilty, convicted and sentenced to life imprisonment.
2. The Appellant was aggrieved by the conviction and sentence and therefore filed this appeal. He has raised four grounds of appeal in his petition namely
3. When the appeal came up for hearing the Appellant abandoned his appeal against conviction and urged against the sentence. The Appellant urged that he was recovering from drug addiction and that on the day he committed the offence he was very sick. He said that he attacked his mother because she provoked him about the death of his step-father. The appellant urged that he had undergone treatment and had fully recorded. He promised never to go back to drugs.
4. The state was represented by Ms Muriithi, learned State counsel. Counsel urged that contrary to Appellant's submission, he had undergone Mental Assessment and found to be fit to plead. Learned State Counsel submitted further that the Probation Report on the Appellant did not recommend his release due to his aggressive and violent behavior. She opposed the appeal.
5. The Appellant challenges only the sentence imposed against him in this case. I have carefully considered this appeal sentencing is a power exercised by a trial court. It is an exercise and discretion and should not be disturbed unless the court either misdirected itself in a matter affecting sentence or passed an unreasonable excessive or harsh sentence given the circumstances of the case.
6. The learned trial magistrate in the ruling before sentence considered accused violent nature denied from the Probation officers Report. The learned trial magistrate then concluded that due to that nature, his attack against the mother was an abomination and therefore a deterrent sentence was called for.
7. I noted that the Appellant's statement was not given due consideration. The Appellant has

- suggested that he may be made and asked to be taken to Mathare Hospital instead of taking into consideration that suggestion the learned trial magistrate ordered for Probation Report.
8. In the Report the Probation Officer alluded to fact the Appellant had been taken to Mathare Drugs Rehabilitation Centre in Nairobi and for Counseling in Psychiatric Clinics due to substance and drug abuse.
 9. With all these information the learned trial magistrate should have sent the Appellant for mental Assessment. That would have enabled the court determine whether the Appellant needed psychiatric treatment. That was an error not to take him for assessment. Today Appellant says he has been treated while in prison and says he has fully recovered. I have no reason to doubt that gauging from his demeanour.
 10. I sent for a second Probation Report for a Home Report given the history of the case. It is signed Ms. Penina Kioko dated 7th November 2013. From this report the victim of the offence for which the Appellant has filed this appeal is depicted to be still suffering from the injuries inflicted by her by the Appellant and his attending specialized treatment for the same. She is also said to be traumatized and has been affected psychologically and requires further support.
 11. On the side of the Appellant himself the report is negative on the basis of his past history of drug abuse which according to the probation officer he still has traits of drug dependency and has not fully recovered from the same but is said to be on a drug recovery program and on medication while in prison.
 12. I have considered the appeal together with the sentiments by the learned state counsel and the probation officers sentence review report.
 13. The Appellant is 38 years old. He attacked his own mother aged 57 years old. He broke her three fingers of one of the hands as a result of which she suffered maim. The probation report shows that she is still undergoing treatment in hospital meaning that the injury was that serious because 4 years down the line she is yet to recover from it. Even though the offence of grievous harm contrary to section 234 of the Penal Code calls for life imprisonment. I still think that by imposing the maximum sentence against the Appellant the learned trial magistrate overlooked an important fact. That is that the accused person even though he did not appear remorseful to the court for the offence he had committed he is nevertheless a first offender and also a young man. I think it was an extreme case for the learned trial magistrate to order incarceration of the Appellant for life. The circumstances of the offence do not support such a severe sentence against the Appellant.
 14. Having come to this conclusion I will allow the Appellants appeal against sentence by setting aside the sentence of life imprisonment and in substitution therefore I impose a sentence of 15 years.
 15. The Appellant's Appeal succeeds to that extent.

DATED SIGNED AND DELIVERED AT MERU THIS 13TH DAY OF NOVEMBER 2013.

J. LESIIT

JUDGE