



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 56 OF 2011**

**(Appeal arising from the conviction and sentence of [P.N. ARERI, R.] in the Chief Magistrate's Court Kakamega in Criminal Case No. 708 of 2010)**

**JIMMY NELSON BOGE ..... APPELLANT**

**V E R S U S**

**REPUBLIC ..... RESPONDENT**

**J U D G M E N T**

The appellant was charged with the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. The particulars of the offence are that the appellant *on the 29.3.2010 at Ingotse sub-location, North Butso location in Kakamega Central district within Western Province, unlawfully assaulted MARY ANDOLI thereby occasioning her actual bodily harm.*

The appellant was also charged with the offence of malicious damage to property contrary to **section 339(1)** of the **Penal Code**. The particulars of the offence are that the appellant *on the 29.3.2010 at Ingotse sub-location, North Butso location in Kakamega Central district within Western Province, willingly and unlawfully damaged two window glasses valued at KShs.7,000/ the property of MARY ANDOLI.*

The appellant pleaded guilty to charges and was convicted on his own plea and sentenced to serve four (4) years imprisonment for each count. The sentence is to run consecutively. His grounds of appeal are that his mitigation was ignored and the sentence is excessive under the circumstances. During the hearing of the appeal he urged the court to assist him as he did not understand the proceedings during the hearing. He informed the court that he has now reformed and was involved in the making of the Parliamentary seats while in prison. Mr. Okoth, State Counsel opposed the appeal and submitted that the sentence is not excessive. The appellant punched the complainant and destroyed property

The record of the trial court shows that the appellant pleaded guilty to the charge. He was convicted on his own plea of guilty and the conviction was proper. The damaged property as per the charge sheet was two window glasses valued at Kshs.7,000/=. I have looked at the P3 form and the injuries suffered by the complainant **MARY ANDOLI** were not quite serious. The doctor classified the injuries as harm. I do find that given the circumstances of the case the sentence is a bit serious. Indeed the appellant is supposed to serve 8 years imprisonment as the sentence is running consecutively. The mitigation by the appellant was of no help to the court as he only indicated that he engages in drinking so as to avoid stealing. The appeal lacks merit and the same is disallowed.

Having found that the injuries sustained by the complainant were not quite serious and the damaged property was two window glasses I will review the sentence to the period already served. The appellant shall be set at liberty unless otherwise lawfully held.

**Delivered, dated and signed at Kakamega this 4<sup>th</sup> day of December 2013**

**SAID J. CHITEMBWE**

**J U D G E**