



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KAKAMEGA
CRIMINAL APPEAL NO. 217 OF 2010

*(Appeal arising from the Senior Resident Magistrate's Court at Mumias
In Criminal Case No. 199 of 2010 [E. K. MAKORI, PM])*

FRANCIS OBONYO OBWOKU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant's appeal is on sentence only.

The grounds of appeal are that:-

1. *The sentence was harsh considering the prevailing circumstances.*
2. *That the Appellant is remorseful and prays for a non-custodial sentence; or the option of paying a fine.*

The Prosecution had no objection and left the matter to the court to exercise its discretion.

The Accused was sentenced to serve five (5) years imprisonment for the offence of grievous harm contrary to Section 234 of the Penal Code.

Section 234 of the Penal Code provides that:-

“any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”

The evidence accepted by the trial magistrate is that the appellant hit the complainant with a metal rod on the shoulder. The complainant sustained a fractured clavicle bone and loss of consciousness. The complainant was admitted in hospital for one day.

There is no evidence of any provocation of the Appellant by the Complainant. The attack led to a serious

injury. However, the appellant is a grandfather to the complainant according to the complainant's evidence. He is therefore a senior citizen. No previous records of any conviction were produced by the Prosecution. The Appellant has already served one year in prison.

This court is inclined to give the appellant an option of a fine in substitution of the remainder of the prison term. The appellant to pay a fine of Kshs.50,000/= in default to serve one year imprisonment.

Delivered, dated and signed in open court at Kakamega this 26th day of January, 2012.

B. THURANIRA JADEN

J U D G E