REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

CRIMINAL APPEAL 115 OF 2010

KARISA SAFARI ….....……APPELLANT

VERSUS

REPUBLIC…….....……..…RESPONDENT

(From original conviction and sentence in criminal case no. 192 of 2010 of the Chief Magistrate's Court at Malindi before Hon. L. W. Gitari – CM)

JUDGMENT

1. The appellant herein was charged before the Chief Magistrate\'s Court in Malindi with the offence of Grievous Harm contrary to Section 234 of the Penal Code. The particulars of the charge were that on the 10th day of February, 2010 at Kwachocha area, Malindi location in Malindi District of the Coast Province unlawfully did grievous harm to Prisla Safari.

2. On 4th March, 2010 he pleaded guilty was convicted and sentenced to serve seven years imprisonment.

In his amended petition of appeal, he raises seven grounds, the first six of which address the extent of the sentence and the last ground challenges the conviction on grounds that "charge was not properly interpreted when the charge had been amended."

His written submissions are primarily addressed to the sentence which the appellant submits was "harsh and excessive". The State gave notice that they would in addition to opposing the appeal, argue for enhancement of the sentence. During the hearing of the appeal, Mr. Kemo urged the court to dismiss the appeal and to enhance the sentence in light of the fact that the appellant "inflicted life threatening injuries" on the complainant. Upon considering the submissions made on the appeal. I take the following view. Under Section 348 of the Criminal Procedure Code no appeal is entertained in respect of an appellant who pleaded guilty in the lower court save in respect of the legality or extent of the sentence.

However, this court is duty bound to satisfy itself that the accused\'s plea of guilty was unequivocal ***(see Adan V R [1973] EA 45).***

In the said case the court outlined the correct procedure for take pleas. The court stated:

"i. The charge and all the essential ingredients of the offence should be explained to the accuse din his language or in a language he understands.

ii. The accused\'s own words should be recorded and if they are an admission and plea of guilty

should be recorded.

iii. The prospection should then immediately state the facts and the accused should be given an opportunity to dispute or explain the facts or to add any relevant facts.

iv. If the accused does not agree with the facts or raises any questions of his guilt his reply must be recorded and change of plea entered

v. If there is no change of plea, a conviction should be recorded and a statement of facts relevant to sentence together with the accused\'s reply should be recorded."

From the record of the Lower Court, this procedure was complied with. The appellant now complains that the amended charge was not correctly interpreted as grievous harm was rendered as "*kumjeruhi*" just as the previous charge of assault hence he was unaware that he was charged with a completely different offence by virtue of the substitution. There can be no merit in that complainant: the record of the Lower Court shows that the prosecution clearly stated that the charges were being substituted and the same were thereafter read to the appellant in a language he understood. The facts clearly indicated that the injuries to the complainant included a "penetrating round" so that even if the words "*kumjeruhi*" were used to translate the statement and particulars of the offence, the facts provided the extent of injury. Besides the P3 form was tendered in court in support of the injuries while addressing the court before sentence the court prosecutor sought to emphasis the severity of the injuries. He told the court that:

"The injury inflicted was life threatening."

There is no complaint that this descriptions were not correctly translated to the appellant. The appellant by his submissions has sought to challenge the extent of the injuries sustained by the complainant. He has stated that the injuries "did not cause paralysis." why would he even entertains such a grave consequence unless the injuries were severe? At any rate, he had every opportunity to dispute the prosecution facts before sentence by supplying his own version of the extent of injuries. He did not.

I think the question of the extent of injuries is also convected to the appellants\' repeated complaint that the sentence against him is excessive. Firstly, the medical evidence leaves no doubt that the injuries sustained by the complainant were severe. Regarding sentence the Lower Court correctly took into account the severity of the injuries and the seriousness of the offence **(Sayeko vs R [1.....]** an appellate court will ordinarily not interfere with the sentence meted out by the trial court except where it appears that the trial court acted on some wrong principle and imposed a sentence that is manifestly inadequate or excessive **(See Jamal vs R (1948)1 SEACA 126)**. It is true that the fact that the appellant pleaded guilty and was probably a first offender stood in his favor and deserved consideration before the sentence (see **Wilson V R 1971] EA 599; Ogalo s/o Owuora vs R 1[1954]21 EACA 270).** The trial court may not have expressly addressed these principles but considering the maximum sentence provided for the offence of Grievous Harm (Life imprisonment) the appellant seven years imprisonment is reasonable in the circumstances of this case. The trial court was entitled to consider that the assault was unprovoked.

In view of the foregoing, I cannot find any justification for interfering with the conviction or sentence either by way of reduction or enhancement of the latter. The conviction was properly returned against the appellant and is upheld along with the sentence. This appeal is therefore dismissed in its entirety.

Delivered and signed this 11th day of October, 2012 in the presence

Court clerks – Leah, Evans

C. W. Meoli

JUDGE