

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

CRIMINAL APPEAL NO. 146 OF 2005

**(Emanating from the Judgment of SRM Siakago
Criminal Case No.462 of 2005)**

PATRICK NJIRU.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was charged with grievous harm contrary to Section 234 of the penal code. The particulars are that on the 18th day of April 2004 at Nguna Sub location in Mbeere District unlawfully did grievous harm to Robert Njeru Kienga. After a full trial, he was convicted and sentenced to serve 30 years imprisonment. He now appeals against sentence only. The appellant contested that the sentence of 30 years is manifestly excessive and urged me to reduce the same. The state contested the appeal against sentence on the grounds that the appellant committed a very serious offence and the maximum sentence is life imprisonment.

In my understanding an appellate court will not interfere with the discretion of a trial court in the matter of sentence unless it appears that in imposing it, the trial court acted on some wrong principle or that he/she imposed a sentence which is manifestly excessive or out rightly illegal. It is also important to understand an appeal against the severity of a sentence is a matter of fact, which must be closely and clearly taken into consideration.

In this case the appellant was rightly and properly found guilty of causing grievous harm to the complainant. In that regard it is the duty of the appellant to confirm and to ascertain that the sentence imposed was excessive in the light of the facts and circumstances. It is therefore my cardinal duty to find out whether the sentence imposed by the trial court was so unreasonable or manifestly excessive to justify interference by this court. In law, it is unusual to impose maximum sentence on a first offender and it would be wrong to depart from the rule.

In imposing a sentence of 30 years, the trial court took into consideration the injuries suffered by the complainant, which were permanent and life threatening in nature. As a result of the injuries inflicted by the appellant, the complainant remained completely disfigured and blind. The complainant underwent surgery for both eyes but on regained partial sight in the left eye. The right eye lost sight and a consequence, the complainant was exposed to considerable pain, disability and discomfort by the gross and grave omission of the appellant. That is a matter which would remain with the complaint for ever and cannot be taken lightly by this court.

Now having taken into consideration all the factors and circumstances in this matter, I think it is just to allow the appeal against sentence by reducing the sentence imposed by the trial court to 25 years imprisonment from the date of conviction. Orders accordingly.

**M. WARSAME
JUDGE**

Dated, signed and delivered in open court at Embu this 9th day of March 2011.

In the presence of:-

Ms. Matiru for the state and the appellant in person.