

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

CRIMINAL APPEAL NO. 188 OF 2009

ESTHER KETER.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

Basically, the appeal is on sentence. The appellant was charged with grievous harm contrary to section 324 of the penal code. The maximum sentence provided for such offence is life imprisonment. This therefore meant that the trial magistrate had the discretion to impose a sentence of life imprisonment or less depending on the circumstance. Herein the learned trial magistrate considered the seriousness of the offence and the mitigating factors and imposed a sentence of 7 years imprisonment to serve as a deterrence to any would be offenders. The sentence may be interfered with by this court only if it was manifestly excessive or unlawful. It is neither unlawful nor excessive considering that the sentence provided for in the offence of grievous harm is life imprisonment. Nonetheless the circumstances of the offence ought to have been seriously considered. The appellant used a stick to attack and injure the complainant whom it would appear was her neighbour. The appellant came to the aid of two young boys being chased by the complainant after being found having taken some animals into the complainant's farm. The appellant was not justified to attack and injure the complainant who posed no danger to her nor the boys who were merely chased away from the complainant's farm.

The appellant over-reacted and used excessive force thereby causing grievous harm to the complainant. Nonetheless, she was remorseful for her offence and being a first offender she ought to have been given a sharp short sentence as a deterrence measure rather than 7 years imprisonment which was lawful but rather on a higher side for a first offender. In that regard, the appeal succeeds to the extent that the sentence of 7 years imprisonment is set aside and substituted for 3 years imprisonment from the date of sentence.

Ordered accordingly.

J. R. KARANJA

JUDGE

5/5/2011