



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT BUSIA
CRIMINAL APPEAL NO. 02 OF 2009

KENNEDY AGENGO ODUORI.....APPELLANT

=VERSUS=

REPUBLIC.....RESPONDENT

7.6.11

Before: Onyancha, J.
Mutai – court clerk
Okeyo for Respondent
Appellant in person, present

Appellant: The court wanted to talk to complainant but has not done so.

D.A. ONYANCHA
JUDGE.

J U D G E M E N T

The appellant attacked the complainant during a drinking spree on the 1st day of January 2009. They were apparently both drunk. The injuries the appellant caused on the complainant amounted to grievous harm.

There is an indication that the parties agreed to settle the matter by appellant paying the complainant a sum of Kshs2,000/= which, however, was not brought to the attention of the trial magistrate as agreed between the parties.

It is possible to argue that had this arrangement been brought to the attention of the court, the same may have influenced the court to give a lesser sentence. However, it was not so brought to the notice of the court and the court sentenced appellant to 5 years imprisonment. Appellant had pleaded guilty and given mitigation. He has so far served 2 ½ years in prison and claims he had paid the complainant the agreed Kshs2000/=.

I have considered all these facts and have formed the opinion that in the circumstances a total sentence of three years (3) would have served the case properly.

I accordingly reduce the total sentence to 3 years imprisonment and payment of 2000/= compensation already received by the complainant. Appellant having served 2 ½ years in prison, he is entitled to a release from prison taking into account the remission of 1/3 of the 3 years.

I order that he be released forthwith. Orders accordingly. Dated this 7th day of June 2011.

D.A. ONYANCHA
JUDGE.