



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**Criminal Appeal 21 of 2008**

**JOSEPHAT EKENO LOPUA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

JOSEPHAT EKENO LOPUA, the appellant was charged with the offence of grievous harm contrary to **Section 234** of the Penal Code. The charge against him was that on 13<sup>th</sup> February 2008 at Kelelwa Village in Nakuru District within Rift Valley Province he unlawfully deed grievous harm to Consepta Kemuma. He pleaded guilty to the charge and upon conviction he was sentenced to 5 years imprisonment. He has appealed against the sentence. Mr. Gumo for the state left the issue of sentence to me.

In his submissions before me, the appellant simply pleaded for lenience claiming that he has in prison, reformed and learnt the art of welding.

Thought he appellant was charged with grievous harm the record shows that the P3 completed in respect of the complainant classified the injuries she suffered as harm. The appellant should therefore have been convicted on the offence of assault causing actual bodily harm contrary to Section 251 of the Penal Code which offence carries a maximum sentence of 5 years and not grievous harm carries a sentence of upto life imprisonment. In the circumstances I quash the Appellant's conviction for grievous harm and substitute therefore a conviction for the offence of assault causing actually bodily harm contrary to Section 251 of the Penal Code.

The appellant being a first offender there is nothing on record to show that he deserved the maximum sentence if he had been onvicted of the former offence. The appellant stabbed the complainant who is his wife with a knife and could easily have killed her. Although I am satisfied that had the court convicted him of the lesser offence of assault it could not have given him the maximum sentence, the appellant deserves to be appropriately punished. In the circumstances I reduce the appellant's imprisonment term to three years imprisonment.

DATED and delivered this 27<sup>th</sup> day of January, 2010.

**D. K. MARAGA**

**JUDGE.**