

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU

Criminal Appeal 189 of 2009

*(From original conviction and sentence in criminal case No. 1506 of 2009 of the
Principal Magistrate's Court at Molo - S. M.S. Soita {PM} dated 1st July, 2009)*

PHILIP KIPLANGAT BETT.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant was charged with the offence of causing grievous harm contrary to Section 234 of the Penal Code (Cap. 63, Laws of Kenya) and was on his own plea of guilty convicted and sentenced to 5 years imprisonment.

Having been convicted on his own plea of guilty the Appellant can only appeal on the grounds of the extent and legality of the sentence under Section 348 of the Criminal Procedure Code, (Cap. 75, Laws of Kenya). He has however appealed on five grounds, which are in essence grounds of mitigation. The Appellant says he is a first offender, he is a bread winner in a family of 8 children, all from a single mother. He has a wife, that he is deeply remorseful for having committed the offence, and appeals to the Appellate court to temper justice with mercy, and exercise leniency in reviewing the sentence.

The punishment for the offence of causing harm contrary to Section 234 of the Penal Code is imprisonment for life. The Appellant was sentenced to 5 years imprisonment. The circumstances and consequences of the Appellant's act are explained in the statement of facts narrated to the court by Mr. Nyakundi learned State Counsel.

The Appellant unknown to the complainant was one of the mourners in a funeral at which refreshments and food was served. The complainant was one of those serving the lucky mourners who ate at the funeral. The Appellant was one of the unlucky ones who did not taste anything at the funeral. Thinking it was a result of the malice of the complainant he boldly went to her home in broad daylight. It is estimated at about 2.30 p.m. and demanded to know from the complainant why she had refused to serve him any food at the funeral.

The complainant's response that she did not see the Appellant proved unsatisfactory. The Appellant grew into a rage and assaulted the complainant causing her to lose one tooth, an upper incisor.

In these circumstances, the assault was quite senseless over a matter which had already passed, that the complainant had not served the Appellant with food at the funeral. Attendance at a funeral is voluntary. There is no custom or requirement that attendants at a funeral will be served with food. Attendance at a funeral is a mark of respect for the deceased departed and sympathy for the deceased's living relatives and is not an occasion for feasting among mourners, and failure to be served with food at a funeral does not constitute a debt for those who miss food or refreshments at a funeral.

The Appellant acted and behaved in a most cruel and cowardly manner by going to attack the complainant in her home for alleged failure to serve him with some food at a funeral. Despite the complainant's plea, that she did not see him, and thus could not take any food to him, the Appellant beat up the complainant knocking off one of her upper incisors, and giving her a permanent gap in her mouth.

The Appellant does not therefore come out as a person who deserves justice tempered with mercy. The Appellant's behavior does not show that he would benefit from a lesser sentence. The appeal has absolutely no merit at all, and I dismiss the same and confirm the trial court's sentence of five years.

There shall be orders accordingly.

Dated, delivered and signed at Nakuru this 28th day of May 2010

M. J. ANYARA EMUKULE

JUDGE