

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT ELDORET

Criminal Appeal 42 of 2008

EVERLYNE KAGEHA:.....APPELLANT

VERSUS

REPUBLIC:.....RESPONDENT

JUDGMENT

EVERLYNE KAGEHA appeals against conviction and sentence. She was charged with assault causing actual bodily harm contrary to section 251 of the Penal Code. After the evidence of six (6) prosecution witnesses she was convicted as her defence was not sufficient to warrant an acquittal. She was sentenced to serve a term of imprisonment of eighteen (18) months. She has filed six grounds of appeal and contends that the trial magistrate failed to properly evaluate the evidence for had he had done that he would have come to a different conclusion. That all the civilian prosecution witnesses were related by either marriage or employment and the possibility of collusion against the Appellant cannot be ruled out. She adds that even adduced evidence was contradictory and could not sustain a conviction. That even the Appellant was injured in the fight which her counsel describes as an affray and not assault. It was urged for her that even if the offence was proved, which it was denied that it was proved, then the sentence was excessive.

The appeal against conviction was opposed by the state who stated that there was sufficient evidence to convict. However on the sentence the state easily conceded that the same was harsh.

I have perused the prosecution evidence at trial. An evaluation and assessment of the same shows that the Appellant did indeed attack the complainant and bite his small left finger. The P3 form filled about 4 hours after the attack is conclusive evidence of injury sustained. I find therefore that the trial magistrate came to the right conclusion and I uphold the finding on conviction and dismiss the appeal against conviction.

The Appellant said nothing in mitigation and the trial court noted that she showed no remorse whatsoever and sentenced her as he did. The maximum sentence allowed by law for this offence is imprisonment for a term of five (5) years. She was released on bail pending appeal on 3rd July 2008. Section 254 (3) (a) (iii) Criminal Procedure Code empowers this court to alter the nature of sentence. In this appeal the Appellant is out on a cash bail of Kshs.20, 000/=. Sentence of 18 months in the present case is excessive. Accordingly this court empowered as above alters the sentence and substitutes the same with a fine of 20,000/=.

Orders accordingly.

DATED SIGNED AND DELIVERED AT ELDORET THIS 13TH DAY OF MAY 2010

P.M.MWILU
JUDGE
IN THE PRESENCE OF:-

Andrew Omwenga - Court Clerk

Nasimiyu - Advocate for Appellant

Kabaka - For the state.