

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

Criminal Appeal 23 of 2005

**FRANCIS MATHEKA
KATING'AYA.....APP
ELLANT**

VERSUS

**FRANCIS MATHEKA
KATING'AYA.....
.....RESPONDENT**

J U D G E M E N T

The Appellant, **Francis Matheka Kating'aya**, was convicted after trial of the offence of **grievous harm contrary to section 234** of the **Penal Code**. He was sentenced to serve **5 years imprisonment**. He appealed against both conviction and sentence.

Unfortunately, by the time the appeal came up for hearing, the Appellant appeared to have served his full sentence. That might explain his apparent lack of interest in the appeal. He did not attend hearing of the appeal.

All the same, I have re-evaluated the evidence placed before the lower court in light of the grounds of appeal set out in his petition filed on the 23rd of March 2005. Though his main complaint appears to be with regard to sentence, he has at **ground 4** complained that the trial magistrate did not consider the relationship between him and the complainant (PW1). Learned State Counsel for the Respondent has supported the conviction.

There was overwhelming evidence that the Appellant, without justifiable cause, attacked and grievously harmed the complainant. He was convicted on good and sound evidence. The conviction is safe.

I find no merit in the appeal against conviction. And the same is hereby dismissed.

Regarding sentence, the same was well deserved and probably lenient, considering that grievous harm carries a maximum of life imprisonment. In any event, the sentence has been fully served.

In the event this appeal is dismissed in its entirety. It is so ordered.

DATED THIS 4TH DAY OF MAY 2010

**H.P.G. WAWERU
JUDGE**

DELIVERD AT MACHAKOS THIS 7TH DAY OF MAY 2010