



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISII**  
**CRIMINAL APPEAL NO. 75 OF 2009**

**(Being an appeal from original conviction and sentence of the SRM's court at Oyugis  
in criminal case No. 360 of 2009 – MRS. R. Ngetich, Ag. PM)**

**BETWEEN**

**FELIX OTIENO OTULA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant was charged with grievous harm contrary to **section 234** of the **Penal Code**. The particulars of the offence were that on 15<sup>th</sup> May, 2008 in Rachuonyo District, he unlawfully did grievous harm to **B O A**.

When the appellant was first arraigned in court on 26<sup>th</sup> June, 2008 and the said charges read to him he admitted that the charges were true. But the prosecution was unable to narrate the facts of the case and sought to mention it in two weeks time because the complainant had been hospitalized.

On 10<sup>th</sup> of July 2008, the appellant changed his plea and hearing was set for 3<sup>rd</sup> of September, 2008. After several adjournments, when the case came up for hearing on 30<sup>th</sup> March 2009 the complainant applied to withdraw the same but her application was rejected by the court because no sufficient reasons had been advanced. The complainant proceeded to testify and told the court that she was 19 years' old and a secondary school student. On 15<sup>th</sup> May 2008 she was coming from school when she met the appellant who was her fiancée. He requested her to accompany him to his house. On their way he started asking her some questions. He threatened to kill her if she did not agree to live with him. Suddenly he poured a certain substance on her head. The substance turned out to be acid which spread to her face, mouth and other parts of the body. She ran to a certain homestead for help. Some water was poured on her and she was eventually taken to a hospital. She sustained acid burns on the head, face, back and on the legs. She remained in the hospital for five months. She added that she had lived with the appellant for a period of four to five years prior to the said incident.

The appellant changed his mind and pleaded guilty to the aforesaid charges. The facts were read out to him and he admitted that they were true and correct.

The prosecution produced a container in which the appellant had put aspheric acid which he had poured on the complainant. A Government Analyst report confirming that the substance was indeed sulphuric

acid was also produced.

The appellant was sentenced to 10 years' imprisonment.

In his appeal against the sentence, the appellant faulted the learned trial magistrate for failing to consider that he had peacefully lived with the complainant for nearly five years. He also lamented that the sentence was harsh and excessive.

The learned trial magistrate who had occasion to observe the complainant noted that she had suffered irreparable injuries to her body.

From the contents of the complainant's medical examination report, I agree that the complainant sustained very severe injuries. There was no good reason as to why the appellant, who was a boyfriend of the complainant decided to pour sulphuric acid on her. Although the appellant was a first offender and pleaded for leniency, it must be noted that the maximum sentence for causing grievous harm is imprisonment for life. The sentence that was passed by the trial court cannot therefore be said to be harsh or excessive. I will not interfere with the same. This appeal is dismissed.

**DATED, SIGNED AND DELIVERED AT KISII THIS 22<sup>ND</sup> DAY OF JULY, 2010.**

**D. MUSINGA**

**JUDGE.**

**22/7/2010**

Before D. Musinga, J.

Mobisa – cc  
Mr. Mutai for the State  
Appellant – present

**Court:** Judgment delivered in open court on 22<sup>nd</sup> July, 2010.

**D. MUSINGA**

**JUDGE.**