



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

**AT ELDORET**

**Criminal Appeal 82 of 2009**

**ROSE IMINZA ::: APPELLANT**

**=VERSUS=**

**REPUBLIC ::: REPUBLIC**

*(Appeal from the decision of Hon. A.B. Mongare ESQ. Resident Magistrate delivered on 15<sup>th</sup> May 2009 at the Chief Magistrate's Court at Eldoret in Eldoret CMCR. No. 2906 of 2009 on conviction and sentence)*

**JUDGMENT**

**I. Background**

1. The appellants, a female adult, had been approached on the 30<sup>th</sup> April, 2009, by the Complainant to pay her debts of moneys due and owing. The appellants attacked the complaint with a razor.

According to the medical report, that

attack was so severe causing cuts on cheeks, jaws, neck and a missing index nail.

2. The appellants was charged with the offence of Grievous Harm Contrary to Section 234 of the Penal Code  
The Particulars of Offence being:  
Rose Iminza

**On the 30<sup>th</sup> day of April, 2009 at Eldoret Town in Uasin Gishu District within Rift Valley Province unlawfully did Grievous Harm to Caroline Chepkoech.**

3. On the 11<sup>th</sup> May 2006 the appellants admitted the offence as read together with the facts of the case. She was convicted on her own plea of guilty and sentenced to 5 years imprisonment.

## II. Proceedings

4. Being dissatisfied with the conviction and sentence the appellants appealed to this High Court of Kenya and on 11<sup>th</sup> December 2009, the appeal was admitted for hearing (Mwilu J). The appeal was thereafter heard by Osiemo J but he was not available to write the Judgment.
5. I was thereafter directed to write and complete this Judgment by the Hon. The Chief Justice through the Principle Judge.

## III. Appeal

6. The Petition of Appeal stated that:
  - i). **The Appellant pleaded guilty to the offence.**
  - ii). **The Appellant was tortured, blackmailed.**
  - iii). **The language used was not understood**
  - iv). **The sentence was harsh**
7. When the Appellant made submissions she only mentioned that she wished the sentence be reduced. No submissions were made as to the issue of torture, black mail, language understood. All she stated was the “--- **appeal is against sentence only. I am a first offender. I am an orphan and I have two children and my mother died in 2008. I pray for leniency**”.
8. The state opposed the appeal on grounds that the sentence was lawful. That the sentence of 5 years imprisonment was not lawful.

## IV. Findings

9. The Law provides that in a plea of guilty there should be no appeal SAVE as to the legality of the conviction and sentence.
10. In this appeal, the issue that was to be dealt with was that of torture and blackmail. No mention of this was made and as such, this Court has no indication as to how these grounds were made and relied on.
11. There being no basis as to conviction, the same is hereby dismissed.

12. As to the sentence, the injuries sustained by the appellants most certainly was Grievous. The Complainant lost a finger nail. She sustained razor cuts on her face/jaw and throat region which most certainly may have been fatal.

13. I accordingly find that the 5 years imprisonment was not excessive. The maximum imprisonment is life imprisonment.

14. The appeal is hereby dismissed.

**DATED this 1<sup>ST</sup> day of September 2010 at ELDORET**

**M.A. ANG'AWA**  
**JUDGE**

**Advocate**

- (i) J.K. Chirchir, Senior State Counsel, instructed by the office of the Attorney General for the State - Present
- (ii) Rose Iminza, Appellant in person - Present