



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CRIMINAL APPEAL NO. 126 OF 2010**

***(From original conviction and sentence in Criminal Case No. 2212 of 2008 of the Principal Magistrate's Court at Nyahururu - H. M. Nyaberi {R.M.} dated 9<sup>th</sup> January, 2009)***

**JOHN NGOTHO GICHUIRI.....  
.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The Appellant was charged with the offence of **assault causing actual bodily harm** contrary to **Section 251 of the Penal Code**, (*Cap. 63, Laws of Kenya*). He pleaded guilty to the charge and was convicted on his own plea of guilty.

The facts were then read and explained to the Appellant, and when the trial court asked the Appellant whether the facts were true, the Appellant said "*all the facts are true.*" The court confirmed the plea of guilty.

In his mitigation the Appellant told the court that the complainant was his brother, he was drunk on the material day, and pleaded for leniency. The prosecution stated that the Appellant was a first offender, and the court observed that he was remorseful, and sentenced him to ten (10) years imprisonment.

In his appeal to this court the Appellant submitted that he suffers from epilepsy and that no one comes to his aid when he suffers a seizure and falls down, and that consequently he is suffering greatly in prison.

**Section 348** of the **Criminal Procedure Code**, (*Cap. 75, Laws of Kenya*) provides that a person who is convicted on his own plea of guilty may appeal only on two grounds, the *legality* and *extent* of sentence.

The maximum sentence for a person who is charged and is on the evidence found guilty, or pleads guilty to the offence of assault occasioning actual bodily harm is imprisonment for five years. The sentence of ten (10) years imposed upon the Appellant was therefore illegal, and the same is set aside.

The Appellant pleads that he was drunk when he committed the offence but it does not appear that

he was so drunk to the extent that he did not know what he was doing, or that what he did was wrong (*i.e. he was insane*). He remembers with remorse his act, and pleaded for leniency. He did not plead his condition of epilepsy at his trial so that the court would have made inquiry into it. Other than his submission to this court, there is no other information about his epileptic condition. It may, it may not be so. But whatever, I would give him the benefit of doubt.

In lieu therefore of the sentence of ten (10) years (*which I have already set aside above*), I would in exercise of the discretion conferred upon this court by **Section 354(3) (b)** of the **Criminal Procedure Code**, I sentence the Appellant to three (3) years imprisonment to run from the date of his conviction.

There shall be orders accordingly.

**Dated, delivered and signed at Nakuru this 15<sup>th</sup> day of October 2010**

**M. J. ANYARA EMUKULE**  
**JUDGE**