REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 74 of 2008

JOSEPH MWANGI IRUNGU ……..... APPELLANT

VERSUS

REPUBLIC …….....……. RESPONDENT

(Appeal from the original Judgment and Conviction of the

Senior Resident Magistrate's court at Kangema in Criminal Case No. 3125 of 2006

dated 27th March 2007 by S. N. Mbungi – SRM)

J U D G M E N T

Joseph Mwangi Irungu, hereinafter referred to as "*the appellant*" was on 6th November, 2006 arraigned before the Senior Resident Magistrates court at Kangema (**S. N. Mbungi – S.R.M.** presiding) on one count of Grievous harm contrary to section 234 of the Penal Code. It was alleged that on 10th April 2005 at Kirogo village in Muranga District within Central Province he unlawfully did grievous harm to **Njoroge Mwangi**. The appellant pleaded not guilty to the charge and his trial ensued. Eventually the appellant was found guilty of the charge, convicted and sentenced to 5 years imprisonment.

Aggrieved by the sentence, the appellant lodged this appeal limited to, as it were, sentence. In his petition of appeal, he states the following with regard to the sentence:-

"**1. That I had pleaded not guilty to the charge.**

2. That the imposed sentence is maximum and manifestly harsh in regard to the evidence of good character which is admissible in respect to section 56 of the evidence Act.

3. That the decided sentence is wholly unjustified if and whether it was satisfactorily meant for rehabilitation purpose.

4. That the imposed sentence is harsh and oppressive in regard to the prosecution case that flowed (sic) with doubts and inconsistencies.

5. That the learned trial magistrate misdirected himself in finding the 5 years imprisonment as satisfactorily (sic) whilst the entire defence evidence required total evaluation and analysation (sic) as described (sic) by the law.

6. I urge this honourable court to lessen the sentence and impose the appropriate sentence that will meet the end (sic) of justice."

As it is evident, the alleged grounds of appeal are really further pleas in mitigation.

When the appeal came up for hearing the appellant maintained that the sentence imposed was harsh and excessive. That he was drunk when he committed the offence and finally that he had met the complainant's medical bill.

Mr. Makura, learned Senior State Counsel opposed the appeal on sentence. He submitted that the offence carries a maximum sentence of life imprisonment. The learned magistrate had considered the appellant's mitigation. The complainant lost his right eye in the process. The sentence was neither harsh nor excessive. Finally counsel submitted that the learned magistrate exercised his discretion properly.

As stated by the court of appeal in the case of **Republic v/s Batista Lisoni Beni C.A. No. 65 of 2004** (UR), sentencing is a matter for the discretion of the trial court. The discretion must however, be exercised judicially. The trial court must be guided by evidence and sound legal principles. It must take into account all relevant factors and exclude all extraneous or irrelevant factors.

There is no doubt at all that the complainant herein sustained very serious injuries following the assault on him by the appellant that culminated in the loss of an eye. The learned magistrate considered this aspect of the matter, as he should, before arriving at the sentence he eventually imposed. Much as the appellant was a first offender, the offence committed was no doubt serious as it carries a maximum sentence of life imprisonment. The appellant was however sentenced to 5 years imprisonment. That cannot be said to be either manifestly harsh nor excessive. If anything, I think it was lenient if all the circumstances of the case are considered. The sentence imposed was certainly legal and I do not detect anything that would remotely suggest that in arriving at the sentence, the learned magistrate took into account irrelevant or extraneous factors and or that he exercised his discretion capriciously.

When all these circumstances are considered, I am of the view that the learned magistrate did not grossly misdirect himself on the sentence he came to nor did he err in principle by failing to take into account the core factors of this case. The sentence arrived at was in the circumstances appropriate and does not therefore call for my intervention. This appeal is accordingly dismissed.

Dated and delivered at Nyeri this 31st day of July 2009

M. S. A. MAKHANDIA

JUDGE