

REPUBLIC OF KENYA

HIGH COURT NAKURU

CRIMINAL APPLICATION 105 OF 2009

JACKSON ODUOR OTIENO.....APPELLANT

VERSUS

REPUBLICRESPONDENT

(From original conviction and sentence Nakuru C.M.CR.C.NO.1829/2009

by Hon. W. Juma, Chief Magistrate, Nakuru)

JUDGMENT

The appellant pleaded guilty to a charge of grievous harm contrary to section 234 of the Penal Code and was sentenced to four (4) years imprisonment.

Section 348 of the Criminal Procedure Code provides that::

“348. No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extend or legality of the sentence.”

It is the extent of the sentence that is being challenged in this appeal.

The appellant who was operating a motor bike taxi disagreed with the complainant over a fare of Kshs.30/=. He punched the complainant in the mouth. The latter lost one tooth.

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The appellant’s counsel submitted that the appellant’s mitigation was not given due weight in the sentence. I have looked at the record and it is clear to me that although the appellant stated that he was sorry and promised not to repeat the act, the learned trial magistrate recorded that the appellant was not remorseful.

In term of section 234 of the Penal Code, the sentence of grievous harm is life.

The learned trial magistrate imposed a sentence of four (4) years imprisonment as opposed to any period over the four (4) years including life sentence. That sentence was lawful and in my view lenient as the complainant lost a tooth over Kshs.30/- only. The appeal is dismissed.

DATED and DELIVERED at NAKURU this 25th day of September, 2009.

W. OUKO

JUDGE