

REPUBLIC OF KENYA
HIGH COURT NAKURU
CRIMINAL APPEAL 328 OF 2008

MARY CHEPKORIR KIBOR.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From original conviction and sentence Eldama Ravine C.M.CR.C.NO.770/2008

by Hon. D. M. Machage, Resident Magistrate, Eldama Ravine)

JUDGEMENT

The appellant, Mary Chepkorir Kibor was charged with and convicted of the offence of grievous harm contrary to Section 234 of the Penal Code. She pleaded guilty and was sentenced to four (4) years imprisonment. She has challenged the sentence.

Before being sentenced the learned trial magistrate called for social inquiry report from the Children's Department. According to that report, the appellant aged 24 years has two children, the complainant aged 6 years and her sibling aged 2 years. The appellant is single. She lived with her mother before this incident. Both the appellant and her mother are heavy drunkards. The report goes further to state that the appellant is of violent disposition and has in the past attacked her mother and her own children.

H.C.CR.A.NO.328/2008

According to the facts narrated in court, on the material day, the appellant directed the complainant to take her (the complainant's) younger sister to bed. In the process the baby slipped from the complainant and fell down, drawing the wrath of the appellant. She attacked the complainant with a stick until the latter fell unconscious. She was taken to the hospital and examined by a doctor who completed a P3 form. The doctor noted that the complainant had been attacked by both blunt and sharp objects. The degree of injuries was assessed as grievous harm.

Although the appeal was admitted there are no grounds upon which it can be considered. The grounds in the petition are only matters of mitigation. The trial court considered the facts and mitigating factors and on that consideration, sought a report from the Children's Department. The report was not in favour of the appellant, hence the sentence of four years. That sentence is within the law and considering that the maximum sentence provided under section 234 of the Penal Code is life imprisonment, it is my considered view that the sentence was not excessive.

The appellant is a threat to her family. On the occasion in question she descended upon her own six year old daughter and beat her up to the extent of being unconscious. For these reasons, I find no material in this

H.C.CR.A.NO.328/2008 appeal for me to interfere with the sentence imposed by the learned trial magistrate.

This appeal is dismissed.

DATED and DELIVERED at Nakuru this 24th day of September, 2009.

W. OUKO

JUDGE