

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI (NAIROBI LAW COURTS)

Criminal Appeal 402 of 2006

MOSES NJOROGE NGUNU..... APPELLANT

V E R S U S

REPUBLICRESPONDENT

(Appeal from the original Conviction and sentence in Criminal Case No. 1659 of 04 of the Senior Resident Magistrate Githunguri (L. Mutai)

J U D G M E N T

The appellant Moses Njoroge Ngunu had been charged for the offence of grievous harm contrary to section 234 of the Penal Code that on the 16th day of November, 2004 at Thuita Village in Kiambu District of the Central Province, unlawfully did grievous harm to Tabitha Njeri Kahugu. He pleaded not guilty to the charge and after hearing of the case, the learned trial magistrate L. Mutai, convicted him and sentenced him to an imprisonment term of 3 ½ years.

The appellant had appealed against both conviction and sentence. However at the hearing of the appeal, he indicated his wish to accept the conviction and abandon that limb of his appeal, and only pursue the limb on sentence. It was his contention that he has already served a substantial part of the term and was just left with 2 months and 20 days to complete. He pleaded with the court to take a favourable view especially because he is a family man and would like to go and take care of his dependants. The learned State Counsel, Miss Gateru indicated the State's appreciation of the withdrawal on conviction but in her view the 3 ½ years for an offence which carries a maximum sentence of life imprisonment was very lenient and the learned trial magistrate had taken into account the appellant's mitigation – so the sentence is neither harsh nor excessive. I will only address the question of sentence visa vis the offence. A look at the P3 form produced at the hearing shows that the complainant had a cut wound on the forehead, a swollen right fore-arm near the wrist, a swollen right knee. An x-ray showed fracture of the lower 1/3 radius and degree of injury was classified as grievous harm.

In determining whether this court should exercise further leniency on the appellant's sentence, I must consider the injuries and how they were inflicted, in relation to the sentence meted. According to P.W.1, the appellant hit her using a slasher, accusing her of snubbing him – he cut her on the forehead, hit her on the back with the flat side of the slasher. He cut her on the right leg and kicked her on the left leg. Appellant then took a 'Kasuku' container next to a tap and used it to pour water on complainant, while saying he would kill her. She lost consciousness. The genesis of the matter, was simply a case of shunned love. Upon conviction, the accused gave his mitigation to the court saying he is a married man aged 32 years and had a wife and child. So the learned trial magistrate was appropriately informed of the appellant's family issues and this was taken into consideration. The learned trial magistrate then correctly noted that:-

“the action caused the complainant to undergo untold suffering. The accused cannot go unpunished.”

Under the Penal Code Section 234, provides that-

Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life, with or without corporal punishment.

Therefore taking into consideration how the injuries were inflicted, what was used to inflict them, the nature of the injuries and the reason for such infliction, I find that the sentence was not harsh or excessive at all.

I find no reason whatsoever to interfere with the remainder of the sentence and thus order that-

- (a) ***Appeal on conviction is marked as withdrawn on application by appellant.***
- (b) ***The appeal on sentence is dismissed and the sentence passed by the trial court is confirmed.***

Dated and delivered at Nairobi this 10th day of March, 2008.

H.A. Omondi

Judge