



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Appeal 736 of 2006**

**(Being an appeal against sentence in Criminal Case 54 of 2006 SRM Mandera, Hon. R.K. Mibei)**

**HUSSEIN BULLE NOOR..... APPELLANT**

**V E R S U S**

**REPUBLIC .....RESPONDENT**

**J U D G E M E N T**

Hussein Bulle Noor (*herein referred to as the appellant*) was charged with the offence of grievous harm contrary to section 234 of the Penal Code that on 19<sup>th</sup> day of February, 2006 at around 10.00 am at Bulla Jamhuria location of Mandera District, within the North-Eastern province, unlawfully did grievous harm to Farah Mohammed Ali. The appellant pleaded not guilty and the matter proceeded to hearing and upon conclusion of the case, the appellant was convicted as charged and sentenced to serve a prison terms of 8 (eight) years. In his amended grounds of appeal, appellant stated that he was only appealing against sentence and stated that, the learned trial magistrate sentenced him without considering that he was a first offender. He prays that the sentence be reduced or substituted with a non-custodial sentence.

The learned State Counsel Mrs Obuo, opposed the appeal on sentence, saying the offence carries a maximum sentence of life imprisonment and considering the serious nature of the injuries complainant sustained, then 8 (years) was not excessive. Appellant argues that although the offence is a serious one, it does not require a long term of imprisonment for the offender to rehabilitate. I think sentencing has a dual role, both to punish and rehabilitate. Appellant terms the eight year sentence as harsh saying the circumstances resulting in the offence were due to temper and uncontrollable situation. Appellant alludes to a spiritual transformation he claims to have undergone while in prison. He complains of ill health saying he is a victim of tuberculosis (TB) and has not yet received good treatment. The appellant prays that the jail term be reduced or substituted to a non-custodial one.

In considering whether the sentence is harsh, I must look at the background leading to passing of the imprisonment term. The appellant and complainant had an exchange of words over the sale of Miraa (Khat), Appellant got hold of complainant by the shirt collar, complainant pushed him away. Appellant picked a huge knife and stabbed the complainant who was seated. He stabbed complainant on the left side of the stomach and left him. Complainant bled profusely and lost consciousness. The four had been previously working together and even sleeping together. The injury was so bad, that the complainant's intestines were protruding. The complainant's abdomen had a lot of blood and the intestines were perforated. The complainant underwent surgery and the perforated intestines were cut.

The appellant had nothing to say in mitigation and this led to the learned trial magistrate remarking this-

***“The accused person is not even remorseful for what he did..... He deserves no mercy.”***

Are there any circumstances that would warrant interfering with the sentence? The incident stems

from a moment of anger but resulting in appellant using unwarranted excessive force to inflict injury on the complainant. Appellant acknowledges that it was his inability to control his temper which degenerated to the situation he finds himself in. I think a non custodial sentence which he pleads for would to my mind be a mockery of the justice system – one must be punished for his misdeed even though at the same time be given a chance to rehabilitate. Under the circumstances then, I think that a five year sentence would serve both purposes and consequently I reduce the eight year prison term imposed by the trial court to a five year prison terms.

This sentence to run from the date of the original sentence.

Dated, delivered and signed at Nairobi this 14<sup>th</sup> day of April, 2008.

H.A. Omondi

Judge