



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NYERI**  
**Criminal Appeal 42 of 2006**

**MICHAEL MWANGI KIBE .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

*(Form original Conviction and Sentence of the Resident Magistrate's Court at Kangema in*

*Criminal Case No.441 of 2005 by G.P. NGARE – RM)*

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

The appellant was convicted after trial on one count of attempted rape contrary to *section 141* of the Penal Code and one count of grievous harm contrary to *section 234* of the Penal Code and sentenced to four (4) and three (3) years imprisonment respectively. The sentences were ordered to run concurrently.

The appellant now appeals to this court on the ground that the sentences imposed on him as aforesaid were harsh and manifestly excessive in view of the fact that he is an ailing man suffering from asthma and his health might deteriorate if the sentence of imprisonment aforesaid were to be fully served. That he is a young man of 22 years who had reformed and had been rehabilitated whilst in prison and had become a good Christian. He prayed for the reduction of the sentence. Mr. Orinda opposed the plea maintaining that the sentence was legal and should not therefore be interfered with.

The appellant attempted to rape the complainant his former employee. In the process he seriously injured her. He actually fractured her radius bone. The complainant had to be operated upon as a result. The doctor who attended to her and filled her P3 form classified the injuries sustained as maim. In injuring her, the appellant used a sharp object namely a panga. Besides the appellant caused the complainant injuries to the mouth resulting in the loosening of her 4 incisor teeth and lower canine.

Upon conviction, the offence of attempted rape carries a maximum sentence of life imprisonment plus hard labour. The appellant was however sentenced to a mere 4 years without hard labour which was an omission on the part of the learned Magistrate. As for the grievous harms the maximum penalty is also life imprisonment. The appellant was however only sentenced to 3 years imprisonment.

The sentences imposed aforesaid cannot be said to have been manifestly harsh and excessive as to attract my intervention. The offences committed were serious and have left a life long imprint in the mind of the complainant. Similarly the complainant has been left with a life long trauma. The sentences imposed considering the foregoing in my view was even lenient.

I have looked at the sentencing notes of the learned Magistrate and I cannot say that in arriving at the sentences, he took into account irrelevant considerations or failed to take into account relevant considerations. I cannot also discern any capricious use of his discretion in sentencing.

Taking into consideration all the facts and circumstances of the case I am of the view that the sentence imposed by the trial court was neither harsh nor manifestly excessive. In the result, my interference of it is therefore not justified. Accordingly I dismiss the appeal with the correction however that the sentence on count one will henceforth be served with hard labour. Otherwise the appeal stands dismissed.

*Dated and delivered at Nyeri this 10<sup>th</sup> day of June, 2008.*

**M.S.A. MAKHANDIA**

**JUDGE**