



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 20 of 2007 & 80 of 2007 (Consolidated)

ROSE LYDIA WAWIRA APPELLANT

Versus

REPUBLIC RESPONDENT

*(Being an appeal against the conviction and sentence by M. R. GITONGA, Senior
Principal Magistrate, in the Chief Magistrate's Criminal Case No. 5637 of 2006 at
NYERI)*

CONSOLIDATED WITH

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NYERI

CRIMINAL APPEAL NO. 80 OF 2007

SILAS NJIRU NYAGA APPELLANT

Versus

REPUBLIC RESPONDENT

*(Being an appeal against the conviction and sentence by M. R. GITONGA, Senior
Principal Magistrate, in the Chief Magistrate's Criminal Case No. 5637 of 2006 at
NYERI)*

JUDGMENT

The first and second appellant are a husband and wife and the parents of the complainant. They were

charged in the lower court with *Grievous Harm contrary to Section 234 of the Penal Code*. They both pleaded guilty as charged. The facts given by the prosecution were that on 7th December 2006 at Ruringu Estate the appellants left their home for the trading centre. On returning home they found their kshs.700 missing from where they had kept it. They inquired from their nine year old son Martin Mutembei Njiru the whereabouts of the money. He denied having seen or having taken the money. The appellants insisted that he had taken the money. The second appellant then put a panga on fire and when it was red hot he began to burn their son on the buttocks. The first appellant also joined in and began to assault the child in a similar method. It was their son's screams that attracted their neighbours who came to his rescue. The matter was reported to the Assistant Chief and the child was taken to Nyeri PGH. Both appellants confirmed that the facts were correct. The first appellant in mitigation stated that she had a small child who was two years old. She therefore sought that she be allowed to take care of the child. In the second Appellant's mitigation he stated that the complainant was their child and that he had stolen the money. He also confirmed that they have another smaller child. The lower court considered their mitigation and proceeded to sentence the first appellant to 3 ½ years imprisonment. The second appellant was sentenced to seven years imprisonment. They both have brought their appeal against sentence.

The offence that they faced has a maximum sentence of life imprisonment. The offence they committed was against a defenceless young child is indefensible. The lower court considered the mitigation they presented and I too has considered their mitigation. Having so considered I find that it is necessary to reconsider their sentence. Accordingly I do hereby set aside the sentence against both appellants passed by the lower court on 14th December 2006. Instead I substitute and sentence both appellants to 2 years imprisonment each. That sentence will begin to run from 14th December 2006.

DATED AND DELIVERED THIS 28TH DAY OF JULY 2008

MARY KASANGO

JUDGE