REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

Criminal Appeal 291 of 2007

JAMES MICHAKU NDIGIRIRI .... APPELLANT

VERSUS

REPUBLIC .... RESPONDENT

(Appeal from original Conviction and Sentence of the Resident Magistrate's Court at

Mukurweini in Criminal Case No. 1078 of 2006 dated 2nd October 2007 by V. W. Ndururu – Ag. SRM)

J U D G M E N T

The Appellant, James Michaku Ndigiriri was charged with the offence of Grevious harm contrary to section 234 of the Penal Code. The particulars of the offence were that on the 14th day of December 2006 at Gaikundo sub-location in Nyeri District of the Central Province wilfully and unlawfully caused grievious harm to Susan Wairimu Macharia. The Appellant pleaded not guilty to the charge when he appeared before the Resident Magistrate's Court at Mukurweini. After due trial the Appellant was found guilty of the charge. He was accordingly convicted and sentenced to fifteen (15) years imprisonment. The Appellant was aggrieved by the said conviction and sentence. Consequently he preferred an appeal to this court against both the conviction and sentence aforesaid.

When the Appeal came up for hearing, the Appellant appeared in person and the state was represented by Ms Ngalyuka learned state counsel. The Appellant at the very commencement of the hearing of the Appeal indicated to the Court that he was dropping his appeal against conviction. However, he was keen to pursue the Appeal against sentence. The state did not object to the course taken by the Appellant.

In his submission on sentence, the Appellant stated that the sentence of fifteen years imposed on him by the trial magistrate was harsh and excessive. That he committed the offence under the influence of alcohol. Finally he submitted that in his stint in prison he had so far trained as a carpenter.

The learned State Counsel on her part neither opposed or supported the appeal on sentence. Rather she elected to leave the matter to court.

Over the years, it has been held that the first Appellate Court should not interfere with the sentence imposed by the trial court solely on the ground that it was heavy, unless it can also be shown that it is manifestly excessive. (See Griffin v/s Republic (1981) KLR 121 and Wanjema v/s Republic (1971) E.A. 494). Indeed in this latter authority it was succinctly put that:-

"......... An Appellate Court should not interfere with the discretion which a trial court exercised as to sentence unless it is evident that it overlooked some material factors, took into account some immaterial factors, acted on wrong principle or the sentence is manifestly excessive in the circumstances of the case ...."

In the instant case the Appellant was sentenced to a mere 15 years for an offence which carries a maximum sentence of life imprisonment. Such sentence cannot be said to be manifestly excessive in the circumstances of the case considering the heinous crime the appellant committed on her sister in law.

According to Dr. James Njoroge Kareithi (PW4) who examined the complainant and filled her P3 form, the complainant sustained the following injuries, two deep cuts on the forehead, deep cut at the back of the head, deep cut on the left fore arm, cut on the palm of the left hand and elbow involving the born. The complainant had to be operated upon since the muscles of the hand are small and been cut. In his prognosis, the doctor opined that recovery is usually poor and the complainant cannot move her fingers adequately and may never fully recover. The appellant's attack on the complainant was beastly to say the least and it is by sheer grace of God that she survived the attack. Yes, the Appellant might have been a first offender, but it cannot be said that by imposing the sentence aforesaid, the trial magistrate did not consider that aspect of the matter. As I have already stated, the sentence was perfectly within the law. The trial magistrate correctly applied his discretion as the offence was serious. This court does not have any or any valid grounds to interfere with the exercise of the aforesaid discretion. Indeed the sentence was merited.

Consequently, I have not been persuaded to interfere with the sentence with the result that the appeal on sentence is dismissed.

Dated and delivered at Nyeri this 22nd day of September 2008

M. S. A. MAKHANDIA

JUDGE