

1.

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NYERI

Criminal Appeal 29 of 2004

(Appeal from the original conviction and sentence in the Resident Magistrate's Court at Baricho in Criminal Case Number 144 of 2003 by J. M. Githaiga – R.M. dated 21st August 2003)

PETER GICHAGO MURAGURI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

Peter Gichago Muraguri hereinafter referred to as the appellant was tried and convicted by the Resident Magistrate Baricho for the offence of Grievous Harm contrary to **Section 234** of the Penal Code. He was sentenced to serve 6 years imprisonment. Being dissatisfied He brought this appeal against both conviction and sentence. At the hearing of this appeal learned State Counsel Ms Ngalyuka indicated to the court that she was conceding the appeal as the trial in the lower court was a nullity, the prosecution having been done by a Police Constable. Ms Ngalyuka however urged the court to order a retrial as in her view, the offence was serious and the evidence against the appellant overwhelming. At that stage, the appellant made a hasty retreat and urged the court to allow him to withdraw his appeal. I am rather uncomfortable about allowing the appellant to withdraw his appeal because that will lead to his continuing to serve a sentence based on a conviction resulting from a defective trial. However in making the application to withdraw the appeal, the appellant has no doubt considered the risk that He stands should his case be retried before another court.

I concur with the sentiments that the offence of which the appellant was convicted is very serious and given the evidence that was adduced against the appellant a more stiffer sentence may well be called for in a new trial. Noting that the appellant has already served more than half the sentence of 6 years imprisonment which was imposed upon him, and noting further that Learned State Counsel does not object to the withdrawal of the appeal, I think it would be fair and just to allow the appellant to withdraw his appeal so that He serves the balance of his sentence.

I therefore allow the appellant to withdraw his appeal and do therefore mark this appeal as withdrawn.

Dated, signed and delivered this 23rd day of January 2007.

H. M. OKWENGU

JUDGE