



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT BUNGOMA**  
**Criminal Appeal 111 of 2006**

SUSAN NASWA.....APPELLANT

VS

REPUBLIC.....RESPONDENT

**JUDGMENT OF THE COURT**

I have heard the submissions by both learned counsel on the issue of the sentence in this matter.

Although the 1<sup>st</sup> appellant is not in court, the record shows that she is 65 years old. That is certainly an advanced age and unless there are extreme circumstances that militate against a non-custodial sentence, or in instances where the court lacks discretion in the nature of the sentence to impose, such an elderly woman should not be in prison.

I have read the probation officer's report. It is said she was rude and unremorseful. In my considered view, the custodial sentence of 1 year was still on the higher side. She has already served 5 months imprisonment. The injuries on the complainant were not serious.

2<sup>nd</sup> appellant on the other hand was also said to have been unremorseful and hence the sentence passed on him. While appreciating that the sentence imposed on the 2 appellants was lawful, I feel that in the spirit of decongesting prisons and also due to the fact that they have both served a prison term of 5 months, I can justifiably interfere with the said sentence.

Accordingly, the appeal against the sentence is allowed. The sentence of 1 year imprisonment for each appellant is hereby set aside. In its place the sentence is reduced to the term already served. The appellants are accordingly set free unless they are otherwise lawfully held.

W. KARANJA

JUDGE

14/5/2007