



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Criminal Appeal 569 of 2005**

**JOHN MAKWELU MUKAMI.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(From original conviction and sentence in Criminal Case No. 1288 of 2004 of the Chief Magistrate's Court at Makadara)**

**JUDGMENT**

The appellant JOHN MUKWELU MUKAMI was convicted for the offence of causing grievous bodily harm contrary to section 234 of the Penal Code. He was sentenced to serve ten (10) years imprisonment. He filed an appeal challenging both the conviction and sentence.

In an amended petition of appeal he abandoned his appeal on conviction and only asked the court to consider his mitigation; that his children were now in the streets; that he had now realized his mistake' and that he had learnt some tailoring skills while in prison.

Learned State Counsel Mrs. Gekobo opposed the appeal on sentence. She contended that the maximum sentence was life imprisonment. The manner in which the offence was committed was actually aggravated. It was counsel's contention that the appellant assaulted the complainant, who was his estranged wife severally, and the last assault made the complainant unconscious and was admitted to hospital. Counsel contended that the appellant had served only 2½ years imprisonment, and there was no reason to interfere with the sentence.

In a short response the appellant stated that the complainant was his wife and that they had quarreled at home. He stated that he would not repeat the offence.

Sentencing is the discretion of the sentencing court. For an appellate court to interfere it must be shown that in passing sentence the sentencing court took into account an irrelevant factor or failed to take into account a relevant factor or that wrong principle was applied of these the sentence itself is so harsh and excessive that an error in principle must be inferred – see SHADRACK KIPKOECH KOGO –vs- REPUBLIC – Criminal Appeal No. 253 of 2003 Eldoret (unreported).

The facts of this case were that the appellant and the complainant used to be husband and wife, but separated in September 2003. The appellant was in the habit of assaulting the complainant (PW1), and even broke her teeth. On the material day of the offence the appellant went to the place where the complainant used to live, assaulted her, then went and took a knife and came back and cut her several times leaving her unconscious. The doctor Dr. Zephania Kamau (PW3) found that PW1 had an injury on the back right scapular, an injury below breast, four wounds on the right forearm, three wounds also on the arm and loss of sensation. The injuries were caused by a sharp object. The doctor classified the injuries as grievous harm, and produced the P3 form as exhibit.

In mitigation before the magistrate the appellant stated that he had small children who depended on him.

In sentencing the appellant, the magistrate stated –

“I have noted the mitigation but the offence was so aggravated did left the complainant maimed for life her hand .....I sentence the accused to 10 years imprisonment”

I observe that under section 234 of the Penal Code, the maximum sentence for the offence of grievous harm is life imprisonment. The appellant was treated as a first offender, though the magistrate did not consider that factor in the notes before sentencing. However, I have not been told that the trial magistrate took into account any extraneous factor or failed to take into account any relevant factor in sentencing. On my part, I find the circumstances of the offence to be quite aggravated. I am of the view that if the magistrate had considered that the appellant was a first offender, he might have given a slightly more lenient sentence. For that reason, I am persuaded to review the sentence imposed.

In the premises I will interfere with the sentence and reduce it to eight (8) years imprisonment. Accordingly the appellant shall now serve eight (8) years imprisonment effective from the date of conviction by the trial magistrate.

Dated and delivered at Nairobi this 20<sup>th</sup> day of June 2007.

**George Dulu**

**Judge**

In the presence of –