



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA  
AT NAKURU

Criminal Appeal 292 of 2006

(From original conviction and sentence of the Resident Magistrate's Court at Eldama Ravine in Criminal Case No.1291 of 2004 – W. M. Kagendo [R.M.]

SAMMY NGETICH.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Sammy Ngetich was charged with two offences under the Penal Code. On the first count, he was charged with the offence of Assault causing actual bodily harm. The particulars of the offence were that on the 10<sup>th</sup> December 2004 at Koibatek District, the appellant assaulted R K thereby occasioning her actual bodily harm. On the second count, he was charged with attempted rape contrary to Section 141 of the Penal Code. The particulars of the offence were that on the same day and in the same place, the appellant attempted to have unlawful carnal knowledge of RK without her consent. The appellant pleaded not guilty to both counts. After a full trial, he was convicted on both counts. On the first count, the appellant was sentenced to serve three years imprisonment. On the second count, he was sentenced to serve seven years imprisonment. The said sentences were ordered to run consecutively. The appellant was aggrieved by his sentence and has appealed to this court.

In his petition of appeal, the appellant complained that his incarceration had caused his health to deteriorate. He stated that he was the sole breadwinner of his young family. He urged the court to allow his appeal and either reduce the sentence that was imposed upon him or set it aside. At the hearing of the appeal, the appellant pleaded with the court to exercise leniency on him. He told the court he was contrite for what he had done. Mr. Mugambi for the State left the issue of sentence to the discretion of the court.

I have considered the plea by the appellant for reduction of sentence. Mr. Mugambi for the State left the issue of reduction of sentence pleaded by the appellant at the discretion of the court. The Court of Appeal in Samuel Githua Njoroge vs Republic CA Criminal Appeal No.53 of 2006 (Nakuru) (Unreported) held at page 2 as follows;

*“The principles upon which an appellate court can interfere with the discretion of a trial [Magistrate] as regards sentence are well settled. The appellate court can only interfere where the trial [Magistrate] in assessing the sentence has acted on wrong principles or imposed a sentence which is manifestly inadequate or manifestly excessive. (See Diego vs Republic [1985] KLR 621).”*

In the present appeal, the appellant was found guilty of the offence of assault causing actual bodily harm and attempted rape. The appellant is not appealing against conviction. According to the evidence adduced in this case, the appellant assaulted the complainant, his sister in-law (*i.e. the wife of his younger brother*), and thereby injured her. He also attempted to rape her but was prevented when the complainant pleaded with him to have compassion on her. The appellant had at the time torn off all the clothes of the complainant including her underpants. The appellant bit the complainant all over her body and cut her fingers with a panga. Taking into account the totality of the brutality meted on the complainant by the

appellant, I do hold that the sentence meted out on the appellant fitted the crime. I have considered the mitigation of the appellant and his plea for reduction of sentence. The same is not merited.

His appeal on sentence is therefore dismissed. The conviction of the trial magistrate is confirmed. The sentences of the trial magistrate are also confirmed save the appellant shall serve the said sentences concurrently instead of consecutively. The appellant shall therefore serve a total term of seven years imprisonment with effect from the date that he was convicted by the trial magistrate.

It is so ordered.

**DATED at NAKURU this 31<sup>st</sup> day of October 2007**

**L. KIMARU**

**JUDGE**