

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU**

Criminal Appeal 243 of 2006

(From Original Conviction and Sentence in Principal Magistrate’s Court at Nyahururu

Criminal Case No.1165 of 2006 – M.T.Kariuki [R.M])

LESHON LENATARE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Leshon Lenatare was charged with the offence of Grievous harm contrary to Section 234 of the Penal Code. The particulars of the offence were that on the 12th January 2006, at Kisiriri village in Laikipia District, the appellant unlawfully caused grievous harm to Mary Njuguiya. The appellant pleaded not guilty to the charge and after a full trial, he was convicted as charged and sentenced to serve seven years in prison. The appellant was aggrieved by his sentence and appealed to this court.

In his petition of appeal, the appellant faulted the trial magistrate for sentencing him to serve a custodial sentence which in his opinion was harsh and excessive. He stated that the trial magistrate had failed to consider his mitigation before he sentenced him to serve the said custodial sentence. At the hearing of the appeal, the appellant reiterated the contents of his petition of appeal. He stated that since his incarceration, he had learnt that cattle raiders had attacked his homestead and stolen all his livestock. They also killed his wife. He pleaded with the court to exercise leniency on him so that he could be released to take care of his children. He stated that he was remorseful and regretted the offence that he had committed. Mr. Mugambi for the State, left the issue of sentence to the court.

I have considered the plea for reduction of sentence by the appellant. Mr. Mugambi for the State left the issue of sentence to the court. The principles to be considered by this court in determining whether or not to interfere with the sentence imposed by the trial court on an appellant are well settled. 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).”

An appellate court will not interfere with a sentence of a trial court unless it is established that the trial court took into consideration irrelevant factors or failed to take into consideration relevant factors before it arrived at its said decision on sentencing the appellant. In sentencing an accused person, a trial court is exercising judicial discretion. That discretion can only be queried by an appellate court if it is established that the trial court sentenced a convict to serve an unlawful sentence.

In the present appeal, the appellant was convicted of assaulting his neighbour with a club which had a nut on one of its end. The complainant sustained a fracture of the skull. She required to be hospitalized. She was operated on her head. She was admitted for more than a month in hospital. The appellant assaulted

the complainant because he felt slighted when the complainant asked him not to allow his cattle to graze on her farm. It is evident that the complainant sustained serious injuries which could have been fatal had it not been for medical intervention. The appellant pleaded with this court to reduce the sentence of seven years imprisonment that was imposed on him by the trial magistrate.

The circumstance of this case precludes this court from interfering with the said sentence of the trial magistrate. The appellant has not raised any grounds that would make this court reach a determination that the trial magistrate either failed to take into consideration relevant factors or took into consideration irrelevant factors when he sentenced the appellant to serve the said custodial sentence. It is the view of this court that the sentence imposed by the trial magistrate fitted the crime.

The upshot of the above reasons is that the appeal filed by the appellant lacks merit and it is hereby dismissed. The conviction and the sentence of the trial magistrate is hereby confirmed. The appellant shall serve the custodial sentence that was imposed by the Subordinate Court.

It is so ordered.

DATED at NAKURU this 16th day of November 2007

L. KIMARU

JUDGE