



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAKURU**  
**Criminal Appeal 570 of 2003**

**ELIUD KAMAU NJENGA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGMENT**

The appellant, Eliud Kamau Njenga, was charged with the offence of grievous harm contrary to **Section 234 of the Penal Code**. The particulars of the charge were that on the 10<sup>th</sup> of October 2003 at Gikingi village, Nyandarua District, the appellant unlawfully grievously harmed Hanah Wangui Kamau. When he was arraigned before the trial magistrate's court, he pleaded guilty to the charge. He was sentenced to serve fourteen years imprisonment. Being aggrieved by his conviction and sentence, the appellant has appealed to this court against the said conviction and sentence.

In his petition of appeal, the appellant has raised several grounds of appeal faulting the decision of the trial magistrate in convicting and sentencing him. He was aggrieved that the trial magistrate had failed to consider the fact that the complainant had been accidentally injured when she had stepped on a hot piece of metal and had not been deliberately burned by the appellant. The appellant was further aggrieved that the trial magistrate had failed to consider the evidence that indicated that the appellant was disciplining the complainant and had no intention of harming her. The appellant was aggrieved that the trial magistrate did not consider his mitigation before sentencing him to a custodial sentence which was, according to him, harsh and excessive in the circumstance.

At the hearing of the appeal, the appellant abandoned his appeal against conviction. He instead concentrated all his efforts in explaining the circumstances that led the complainant to sustain the injuries that she did.

According to the appellant, he disciplined the complainant after she had misused the sum of Ksh 40/= which the appellant had given her to purchase food that was to be the lunch for the family on the material day. He explained that he had administered six strokes of the cane to the complainant after which the complainant rushed out of the house and accidentally stepped on hot charcoal which burnt the soles of her feet. The appellant conceded that he did not take the complainant to hospital until the neighbours alerted the Local Chief who took the complainant to the hospital and had the appellant arrested. The appellant urged the court to consider the mitigating circumstances that led to the complainant to sustain the said injuries. He submitted that on that particular day, that was the only sum of money that he had earned after undertaking some casual work for a neighbour. In essence, the appellant was saying that the fact that the complainant had misused the money that was meant to buy food for the family, incensed him so much that he thought that the only way that he could resolve the issue was to discipline her. The appellant took into account the fact that the complainant's mother had complained that the complainant had become a badly behaved child. Mr Koech Learned State Counsel left all the issues raised by the appellant for determination by the court.

This being a first appeal, this court is mandated to re-evaluate and reconsider all the facts of the case and also the points of law in issue so as to reach its own independent determination whether or not to uphold the conviction of the appellant. (See **Njoroge –vs- Republic [1987] KLR 19**). In the instant appeal, the appellant pleaded guilty to the charge. Although in his petition of appeal, he raised grounds challenging

his conviction, when this appeal came up for hearing, the appellant abandoned, rightly in my view, his appeal against conviction. Having re-evaluated the trial magistrate's record, I find nothing to fault the manner in which the plea of guilty was recorded. The trial magistrate complied with the guidelines laid down in the case of **Adan –vs- Republic [1973]E.A. 445**. The issue that is therefore left for the determination by this court is whether the sentence of fourteen years imprisonment meted out on the appellant was excessive in the circumstances of this case.

As explained by the appellant (*a fact which is borne out by the record of appeal*) the complainant is the daughter of the appellant. At the material time, the complainant was fourteen years of age. The appellant earned his living and sustained his family by undertaking casual work for his neighbours. He also augmented his income by repairing plastic containers. From the facts narrated to the court by the prosecution, it is evident that the appellant and his family literary lived from hand to mouth. When the complainant made the decision to spend the Ksh 40/= on her own frolick that the appellant had been paid as wages for that day, instead of buying food for the family as she had been instructed, for the appellant, it proved to be the final straw that broke the camel's back.

It is apparent that the complainant had prior to the fateful day had disciplinary problems with her parents. Although the appellant would like this court to believe that the complainant accidentally stepped on hot charcoal, it is evident that the appellant deliberately heated up the piece of metal which he used to scald the sole of the feet of the complainant. Maybe the appellant was of the view that he was 'disciplining' the complainant. Unfortunately for him, he also broke the law. The **Children Act, 2001** specially protects children from being subjected to abuse, either physical or psychological. (*See Section 13 of the Act*).

The appellant compounded his crime by refusing to take the complainant to hospital. It is only after the intervention of the Area Chief, that the complainant was taken to hospital. According to the P3 which was produced in evidence by the prosecution, the complainant was admitted for a total of thirty four days in hospital. The Doctor who assessed the injuries sustained by the complainant established that she had sustained eight per cent burns on bilateral soles of her feet. The doctor did not however indicate the degree of permanent injury that the complainant had sustained.

Taking into consideration all these facts, and the fact that the complainant is the daughter of the appellant, it is my considered opinion that the sentence of fourteen years imprisonment was harsh and excessive in the circumstances. I therefore set aside the said sentence and substitute it with an appropriate sentence of this court. The appellant is sentenced to serve five (5) years imprisonment. The said term of imprisonment shall take effect from the 9<sup>th</sup> of December 2003 when the appellant was sentenced by the trial magistrate.

It is so ordered.

**DATED at NAKURU this 1<sup>st</sup> day of February 2006.**

**L. KIMARU**

JUDGE