



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**

**CRIMINAL APPEAL 527 OF 2004**

**(From original conviction and sentence in Criminal Case No.182 of 2004 of the Senior Resident Magistrate's Court at Garissa)**

**AHMED MOHAMMED MUHAMMED .....APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

**AHMED MOHAMED MUHAMMED**, hereinafter referred to as the Appellant, was charged with the offence of assault causing grievous harm contrary to Section 234 of the Penal Code. The particulars of the offence were that on the 17th day of February, 2004 at around 17.30 hrs at Dagahaley Refugee Camp of Garissa District within the North Eastern Province unlawfully assaulted his wife Halima Sheikh Abdi thus causing her grievous harm.

On 25th February, 2004 when the plea was taken, the Appellant pleaded not guilty to the charge. Hearing of the case was then scheduled for the 2nd March, 2004. In the meantime the Appellant was admitted to a bond of Kshs.50,000/= with one surety of like sum. Come on 2nd March, 2004 and the hearing of the case could not take off for want of jurisdiction by the Court that had been assigned to hear the case.

On the 30th March, 2004 when the case eventually came up for hearing the Appellant indicated that he wished to change his plea. The Court record then indicate "Court" Charge read over to the accused and explained in a language he understands and he replies:-

"Accused: It is true.

Court: Plea of guilty entered"

The Prosecutor then sought an adjournment on the basis that he did not have the Police file. The case was than stood over to 14th April, 2004. On that day the Prosecutor gave the facts of the case which the Appellant accepted as correct. The Appellant was then convicted on his own plea of guilty. He was thereafter sentenced to seven (7) years imprisonment.

The Appellant was aggrieved by the said conviction and sentence. He therefore lodged this Appeal. From the record of this Court, it would appear that the Appeal was admitted for hearing limited to sentence alone.

In **GRIFFIN –VS- REPUBLIC (1971) KLR 121 and WANJEMA –VS REPUBLIC (1971) EA 493**, it was held that the first Appellant Court should not interfere with the sentence imposed by the trial Court on the ground solely that it is long and heavy, unless it is also shown to be manifestly excessive. The offence carries a maximum sentence of life imprisonment. The Appellant herein was sentenced to 7 years imprisonment. Considering the circumstances under which the offence was committed, the fact that the Appellant pleaded guilty and thereby saved valuable Judicial time and the fact that he was a first offender, I am persuaded that the sentence imposed would appear in those circumstances to be manifestly excessive. Since the Appellant has been in custody from 18th February, 2004, I am of the view that the

imprisonment term already served by the Appellant is sufficient punishment for the said offence. I therefore commute the sentence of the Appellant to the term already served. In the circumstances therefore the Appellant is hereby set at liberty unless otherwise lawfully held.

Dated at Nairobi this 18 of July, 2005

**M. S. A. MAKHANDIA**

**JUDGE**