

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU

CRIMINAL APPEAL 68 OF 2004
**(From original conviction and sentence of the Principal
Magistrate's Court at Nyahururu in Criminal Case No. 328 of
2004 – K. A. Owour)**

PETER NJENGA MUTHUMBI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Peter Njenga Muthumbi, was charged with the offence of assault causing actual bodily harm contrary to Section 251 of the Penal Code. The particulars of the offence were that on the 17th of January 2004 at Sipili Farm, Laikipia District, the appellant unlawfully assaulted Muthumbi Kungu thereby occasioning him actual bodily harm. When the appellant was arraigned before the trial magistrate's court, he pleaded guilty to the charge. He was convicted on his own plea of guilty and was sentenced to serve three years imprisonment. Being aggrieved by the custodial sentence imposed, the appellant appealed to this court against the said sentence.

At the hearing of the appeal, the appellant submitted that he had been sufficiently punished for the offence which he pleaded guilty to. He stated that he regretted committing the offence. He submitted that he was now reformed and was pleading for the leniency of the court. He undertook not to be a repeat offender. Mr Koech, Learned State Counsel left the issue as to sentence to the court.

I have re-evaluated the facts of this case and considered the submission made by the appellant. The appellant does not deny that he assaulted the complainant (who is his father) and caused him injuries on his face, leg and chest. I have perused the P3 and note that the injuries sustained by the complainant were not serious. To borrow a terminology from the law of negligence, the complainant sustained soft tissue injuries, which I presume must have healed a few days after the said assault. The appellant has been in lawful custody since the 22nd of January 2004 when he was first arraigned before the trial magistrate's court. Although he was initially released on bond, he was unable to provide the necessary sureties and therefore when he was sentenced on the 4th of March 2004, he had already spent about one and a half months in lawful custody. In total, the appellant has been in lawful custody for twenty months. He has told the court that he is remorseful. He regrets committing the offence. He pleads for the leniency of this court.

Having considered the facts of this case, and especially the injuries suffered by the complainant and also noting the fact that the complainant and the appellant are father and son, I find merit in the submission made by the appellant that the custodial sentence of three years imprisonment imposed on him was harsh and excessive in the circumstances. I will therefore allow the appeal against sentence. I will set aside the custodial sentence of three years imprisonment imposed and substitute it with a sentence of this court commuting the sentence of the appellant to the period already served. The appellant is therefore ordered set at liberty and released from prison forthwith unless otherwise lawfully held.

DATED at NAKURU this 19th day of October 2005.

L. KIMARU

JUDGE

