

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CRIMINAL APPEAL 492 OF 2003

**(From original conviction and sentence of the Senior Resident
Magistrate's Court at Molo in Criminal Case No. 2374 of 2000 –
J. Kiarie (S. R.M.)**

JOSEPH KIPROP MENGICH.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The appellant, Joseph Kiprop Mengich, 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 28th of January 2000 at Lengenet Scheme, Rongai Nakuru District, the appellant caused grievous harm John Kiama Ndirangu. The appellant pleaded not guilty to the charge. After a full trial, the appellant was convicted as charged. He was sentenced to serve seven years imprisonment with seven strokes of the cane. The appellant was aggrieved by his conviction and sentence. He has appealed to this court against the said conviction and sentence.

At the hearing of the appeal, the appellant however abandoned his appeal against conviction. He however pleaded with the court to consider reducing the custodial sentence that was imposed on him. He stated that he was remorseful. He said he had reformed his behaviour and was ready to be rehabilitated and be a useful member of the society. The appellant pleaded with the court to exercise leniency on him as he had already served four and a half years of the imprisonment term imposed. He submitted that since his incarceration in prison he had become sick. His face had become swollen. All the effort to treat the said illness by the prison authorities had been in vain. He urged the court to put into consideration the above factors and accordingly reduce the custodial sentence imposed. Mr Koech, Learned Counsel for the State did not oppose the appeal on sentence.

I have considered the submissions made by the appellant which has not been opposed by the State. The appellant is satisfied with his conviction. He has however pleaded with the court to consider reducing the custodial sentence imposed on him. I have considered the fact that the appellant has already served four and a half years of the term of seven years imprisonment imposed. I have also considered the fact that the appellant was sickly when he appeared before me to argue his appeal. For all intents and purposes, the appellant appears to have been sufficiently punished for the offence which he was charged and convicted. He is remorseful. He has begged for the leniency of this court. The State has not opposed the appellant's appeal on sentence. I think the appellant has reflected upon the folly of his actions. He told the court that he had reformed and was ready to be rehabilitated as a useful member of the society. For the reasons stated, I find the appeal by the appellant on sentence has merit. I consequently set aside the sentence imposed by the trial magistrate and substitute it with the sentence of this court commuting the custodial sentence of the appellant to the period already served. The appellant is ordered set at liberty and released from prison unless otherwise lawfully held.

DATED at NAKURU this 12th day of October 2005.

L. KIMARU

JUDGE

