

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Criminal appeal 40 of 2003

(From Original conviction (s) and Sentence (s) in Criminal Case No. 888 of 2001 of the Resident Magistrate's Court at Mwingi Ondabu D.O on 28/11/02)

PETER MAITHYA MWANZIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was convicted of the charge of causing grievous harm Contrary to section 231 of the Penal Code. He was sentenced to five years imprisonment. He has served about 3 years of the sentence. He appealed against the conviction and sentence. He now abandons the appeal on conviction and seeks that the court considers the sentence only. He has only about five months to serve in prison. He had prayed for a non custodial sentence but the court had noted that the appellant had a previous conviction although unrelated to this offence. The appellant has effectively lost his opportunity to argue his appeal because his appeal could not be heard in good time.

I have carefully considered the circumstances of this case. The appellant has served 3 years of the 5 years of sentence. If he had anything to learn out of the sentence, he must have learnt it. If he was being punished for injuring another, he has been punished. All in all, there is room to give him sympathy and leniency hoping that he will not repeat the offence when he is released. It is the decision of the court that the period the appellant has served of 3 years is sufficient. The sentence of 5 years is accordingly reduced to a sentence of 3 years which the appellant has already served. While the conviction is confirmed, the sentence is hereby reduced to three years and the appellant is forthwith released from prison unless otherwise lawfully held therein. It is so ordered.

Dated and delivered at Machakos this 18th day of October 2005.

D.A. ONYANCHA

JUDGE