



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISII**

**CRIMINAL APPEAL NO.201 OF 2003**

(From original conviction and sentence in Criminal Case No.1058 of 2002 of the Resident Magistrate's Court at HOMA BAY. – J. WANJALA ESQ., R.M)

**JOHN OTIENO ABUKA ..... APPELLANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

Appellant was convicted on two charges the first that of Grievous harm c/s 234 of the Penal Code and the 2nd that of Assault contrary to Section 251 of the Penal Code. He was sentenced to 3 years imprisonment in the first count and 6 months imprisonment in the second count.

Initially the appellant had appealed against both the conviction and sentence. However on the hearing day he, through his counsel abandoned appeal against conviction and argued appeal against sentence. He had been sentenced on 2nd July 2003. Six months are already over and therefore he has already served the sentence in the 2nd count as the sentence was running concurrently.

In Count 1 appellant was sentenced to three years imprisonment. The charge of grievous harm is serious is serious. However the appellant was a first offender. He asked court to forgive him and said he had a 80 year old mother, two children and a sick brother he was looking after. The court should have considered these factors and gave a less sentence.

In the circumstances I set aside the sentence of 3 years in the first count and substitute it with one of 18months imprisonment.

It is so ordered.

**KABURU BAUNI**

**JUDGE**

**20/7/2004**

Delivered on 20th July 2004

**KABURU BAUNI**

**JUDGE.**