

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

CRIMINAL APPEAL NO.57 OF 2004

(From original conviction and sentence of the Senior Resident Magistrate's Court
at Oyugis in Criminal Case No.675 of 2004 – S. O. OMWEGA ESQ., S.R.M)
STEPHEN ONYANGO ODAWO..... APPELLANT
VERSUS
REPUBLIC RESPONDENT

JUDGMENT

The appellant was convicted on his own plea of guilty for the offence of assault c/s. 251 Penal Code and that of malicious damage to property c/s.339 (1) Penal Code. In the first count he was jailed for 2 years and in the 2nd count fined shs.10,000/= in default 12 months imprisonment.

Though the appellant had appealed against both conviction and sentence he abandoned the appeal against conviction and canvassed appeal against sentence. Court has told that the appellant is remorseful and has reconciled with his mother who was the complainant.

The learned State Counsel conceded the appeal against sentence. The appellant was said to have assaulted his mother. However he was said to be a first offender and said he was sorry. He prayed for leniency. Court has told he had reconciled with his mother. The sentence of two years meted in the first count was excessive in the circumstances. I set it aside and substitute it with one for a fine of shs.5000/- i/d 6 months imprisonment.

As to the said count he was fined shs.10,000/- i/d 12 months imprisonment. The value of the damaged property was only shs.1,000/=. The sentence was excessive. I set it aside and substitute it with one of shs.5000/= in default 6 months imprisonment.

It is so ordered.

KABURU BAUNI
JUDGE.
8/7/04

Delivered on 8th July 2004.
Mr. Soire for appellant.

KABURU BAUNI
JUDGE.