



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT KISII**  
**CRIMINAL APPEAL NO.207 OF 2004**

**(From original conviction and sentence of the Chief Magistrate's Court at Kisii  
in Criminal Case No.1811 of 2004 – A. A. INGUTYA ESQ., S.R.M)**

**EDWARD KICHANA GENTOTO ..... APPELLANT**  
**VERSUS**  
**REPUBLIC ..... DEFENDANT**

**JUDGMENT**

Appellant was convicted for the offence of assault causing actual bodily harm c/s 251 Penal Code by the Senior Resident Magistrate Kisii. He pleaded guilty and was sentenced to two (2) years imprisonment.

The appeal was against both conviction and sentence. However during the hearing the appeal against conviction was abandoned.

The State Counsel conceded to the appeal against sentence.

As I said the appellant pleaded guilty. The facts given by the prosecution were very scanty – just three sentences. Apparently the P3 form was not produced to show the extent of injuries suffered by the complainant. Appellant was a first offender and he pleaded for leniency. The sentence of 2 years imprisonment was, in the circumstances harsh and excessive. The court did not ever say why it felt such a sentence was warranted. The magistrate did not say why he felt that the appellant could not benefit from a non-custodial sentence. He did not properly direct himself to give a proper and just sentence and I will therefore allow the appeal.

Appellant has already served over 3 months of the sentence. I feel that is enough punishment. I therefore substitute the sentence of two years to one of the period already served. Appellant be set at liberty unless otherwise lawfully held.

It is so ordered.

Dated and delivered at Kisii this 29th day of November 2004.

**KABURU BAUNI**  
**JUDGE**