

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CRIMINAL APPEAL NO.121 OF 2004

**(From original conviction and sentence of the Resident Magistrate's Court at Kehancha
in Criminal Case No.61 of 2004 – M. K. K. SEREM ESQ., RM)**

GATI MACHUMBE APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

Appellant was convicted by the Senior Resident Magistrate Kehancha for the offence of Grievous harm c/s.234 of the Penal Code and sentenced to five years imprisonment.

The particulars were that on unknown dates in the month of January 2004 at Nyamaharaga s/location she unlawfully did grievous harm to **GATHRIDA BOKE JUMA**.

The appellant had appealed against both the conviction and sentence. However on the hearing day and she abandoned her appeal against conviction and argued appeal against sentence. It was submitted that the sentence of 5 years was excessive. Appellant was said to be an old lady of 75 years.

The appeal was opposed. It was submitted that appellant seriously assaulted the complainant burning her for stealing shs.10/=.

It is not in dispute that appellant assaulted the complainant. PW1 the Clinical Officer who examined complainant found several burn marks. However Court has been told the appellant is 75 years old. This has not been disputed. The complainant is her grand daughter and was disciplining her for stealing money. Though she went over board I feel a jail sentence of 5 years for an old woman of 75 years is excessive. She was jailed in May and before then she was in custody from February 2004. She was a first offender. A non-custodial sentence should have been considered.

I therefore allow the appeal against sentence and set aside the sentence of 5 years imprisonment. I will wait for a probation report. M. on 18/11/04.

KABURU BAUNI

JUDGE

1/11/04

Mr. Chichi for State
Appellant present

Mr. Chichi for State Appellant present.

KABURU BAUNI

JUDGE