

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HCRA NO. 93 OF 2004

JANE KOOME APPELLANT

VERSUS

REPUBLIC RESPONDENT

***(Being an appeal from the Judgment of the PMCC Maua in Cr. Case No. 3159 of
2003)***

JUDGMENT OF THE COURT

On 7.10.2004, I allowed the appellant's appeal on sentence only by setting aside the twelve (12) month's imprisonment imposed upon her by the trial court and substituting the same with six (6) months community service. I reserved my reasons for the judgment and I now give the same.

The appellant herein was charged with assault causing actual bodily harm contrary to section 251 of the Penal Code namely that on 24.10.2003 at Kangeta Market, Kangeta Location in Meru North District of the Eastern Province, she unlawfully assaulted JANICE MWENDWA MALAI thereby causing her actual bodily harm.

The facts of the case were that on the material day at about 7.00pm, the complainant was in her kiosk at Kangeta Stage. She was together with another lady called Mary (PW2) when the appellant came to the kiosk after the complainant had gone into the kiosk intending to close the kiosk. Some conversation took place between the appellant and PW2 and later appellant demanded that the complainant do open the door so she could circumcise her. That thereafter, while complainant was still inside the kiosk, the appellant's husband came around and the appellant erroneously hit him with a stone, and a quarrel between the appellant and her husband ensued. Then the complainant opened the door of the kiosk on being asked to do so by Mary and when the complainant came out of the kiosk, the appellant hit her with a stone on the back and on the forehead. The matter was reported to police and appellant was subsequently arrested and charged. The complainant was treated at Maua Methodist Hospital after which a P3 Form was issued. The P3 Form dated 28.10.2003 showed that the complainant had a scalp wound – stitched with two (2) stitches and also bandaged and also had posterior chest wall tenderness. The injury was classified as harm.

After full hearing the trial magistrate found the appellant guilty, convicted her and sentenced her to serve twelve (12) months' imprisonment. In mitigation, the appellant told the court that she was the only breadwinner and that her husband had left her. The prosecution informed the court that the appellant was being treated as a first offender.

The maximum sentence for the offence of assault causing actual bodily harm is five years. As a first offender, I believe that the twelve months' imprisonment for the kind of injuries sustained by the complainant was excessive in the circumstances. It is for this reason that I reduced the sentence of twelve (12) months imprisonment to six (6) months community service.

It is so ordered.

Dated and delivered at Meru this 20th day of December 2004.

RUTH N. SITATI

Ag JUDGE

20.12.2004