



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**CRIMINAL DIVISION**  
**CRIMINAL APPEAL NO. 525 OF 2003**  
*(From original conviction(s) and Sentence(s) in Criminal case No. 2317 of 2003 of  
the Chief Magistrate's Court at Kibera (Mr. Omosa – R.M.)*

SAMUEL MWANGI MUIRURI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

**J U D G M E N T**

**SAMUEL MWANGI MUIRURI** was charged with the offence of **GREVIOUS HARM** contrary to Section 234 of the Penal Code. The Complainant was the Appellant's 2nd wife. After she gave evidence against him, the Appellant changed his plea to that of guilty. He was convicted and sentenced to 4 years imprisonment.

The Appellant appeals against the sentence. In his petition of Appeal he raises the following grounds:

- 1. That he pleaded guilty due to the fact that he was involved in a domestic quarrel.**
- 2. That he has a family which wholly depended on him.**
- 3. That he settled with the Complainant in the case, who is his wife, and from whom he has sought forgiveness.**
- 4. That he was of poor health.**
- 5. That he was a first offender.**

**MISS MWENJE**, learned counsel for the State submitted that the maximum sentence for the offence was life imprisonment. That the sentence imposed of four years was quite lenient. That the sentence was commensurate to the injuries suffered by the Complainant.

I have considered this Appeal together with the facts and the circumstances of the case. In the first place, the P3 form admitted in evidence shows that the Complainant suffered three deep stab wounds on the left side of her chest which were all sutured or stitched. In addition she suffered haemothorax which is bleeding in the chest cavity. The P3 form also shows that the Complainant was admitted in hospital for a week. The injuries she suffered were classified as grievous harm.

From the evidence adduced by the Complainant and the facts led by the Prosecution, the attack on the Complainant was totally unprovoked.

In determining which sentence to impose, the court must bear in mind the gravity of the offence charged, whether or not the offence was aggravated, whether the Appellant was a first offender and whether he pleaded guilty to the charge. In the instant case the Appellant pleaded guilty thus saving the court's time. He was also a first offender.

As for the injury caused and the circumstances surrounding this case, I would say that the offence was aggravated. I say so for three reasons. First, the Complainant had not provoked the Appellant in any way. The attack was sudden and uncalled for from the evidence adduced. Two, the Appellant used a knife with which he stabbed the Complainant three times. Three, the injury caused to the Complainant was severe as demonstrated by the fact that the Complainant's wounds were not only stitched but she had to be admitted in hospital for a week.

I have considered each of the grounds raised by the Appellant. As for the offence being domestic, I do not think that there are domestic offences and non domestic offences. At least the law does not classify any offence along domestic lines. In my own view, the fact that a person has attacked a member of his family, especially in circumstances such as prevailed in this case, causes the offence to be more serious. It does not reduce the severity of the sentence like the Appellant seems to suggest in his submission. That ground therefore does not benefit the Appellant in any way. The fact he settled with the Complainant subsequent to this charge is neither here nor there. If anything it only works to assist the Complainant to heal and to forgive. It would not in my view, affect the sentence imposed in any way.

The Appellant's poor health was not demonstrated either to this court nor to the lower court. He, however, submitted that he was 61 years old. That still does not add value to the Appeal.

Having considered this appeal, I find that court lacks in merit and therefore dismiss it. The conviction is upheld and the sentence confirmed. Dated at Nairobi this 3rd day of December 2004.

**LESIT**

**JUDGE**