

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

CRIMINAL APPEAL NO. 333 OF 2002

(From Original Conviction and Sentence in Criminal Case No.440 of 2002

of the District Magistrate's Court at Taveta –G.M. Gogwe (D.M.I.)

KIBO JIMMY KITAVI APPELLANT

- VERSUS -

REPUBLIC RESPONDENT

J U D G E M E N T

The appellant was charged with causing grievous harm contrary to Section 234 of the Penal Code on Count 1. He pleaded Guilty and was sentenced to serve 3 years imprisonment and 3 strokes. He was also charged with malicious Damage to property contrary to Section 339(1) of the Penal Code for which he was convicted and sentenced to one year imprisonment. He has appealed on Sentence alone having abandoned the portion Conviction. His only ground is that he is remorseful and the only family breadwinner.

The Sentence was passed after a plea of not guilty which has not been challenged. The State Counsel opposed the appeal and rightly so and there are no good reasons to warrant the interference with the Sentence. The accused had attacked the complainant for no apparent reason. However since he appears remorseful I will reduce the number of strokes from 3 to 1 stroke of the cane. The appeal shall succeed to that extent only.

Dated and Delivered at Mombasa this 27th March, 2003.

P.M. TUTUI

COMMISSIONER OF ASSIZE