

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO. 603 OF 2002

(From Original Conviction and sentence in criminal case no. 3891 of 2002 of the S.P.M. court at Kibera

**THOMAS MIKWA KONGOI APPLICANT
VERSUS
REPUBLICRESPONDENT**

JUDGMENT

The appellant was convicted of assault causing actual bodily harm contrary to section 251 of the Penal Code. He was convicted and sentenced to 20,000/- fine or 2 years imprisonment. He has served about 11 months. He appeals on sentence since he had pleaded guilty at the lower court. Mr. Monda, for the Attorney General does not support the sentence as it stands. He states that according to section 28 of the Penal Code, a fine of 20,00/- should have attracted not more than 12 months. He states that the sentence meted out to the appellant is therefore illegal. I agree with him. The appellant should have received not more than 12 months prison sentence. He would by now have finished his sentence. He is accordingly illegally held.

This appeal is allowed to the extent of reducing the original sentence to a maximum of 12 months, which should have been served by three months ago. The upshot is that the appellant has served the full sentence. The appeal is accordingly and to that extent allowed. The sentence is varied to the said extent. The appellant is hereby ordered released forthwith unless lawfully held in prison. It is so ordered.

Dated and delivered at Nairobi this 30th day of April 2003.

**D.A. ONYANCHA
JUDGE**