

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

APPELLATE SIDE

CRIMINAL APPEAL NO.351 OF 2002

(From Original Conviction and Sentence in Criminal Case No.1061 of 2002 of the Chief Magistrates Court at Mombasa delivered on 6.8.02 –A.W. Ngugi, RM)

**KENGA LOLO MGALLA APPELLANT
VERSUS**

Kenga Lolo Mgalla was convicted of the offence of Grievous Harm contrary to Section 234 Penal Code and fined Sh.30,000/- or in default to serve three years imprisonment on 6th August 2002. He was not able to raise the fine and has thus served one year imprisonment to date.

He has appealed against sentence on grounds that he is an old man, married with two wives and has twenty children and several grand daughters. He prays for leniency and reduction of sentence. In agreement with Miss Kwena, learned State Counsel, the default term of imprisonment before Section 28 of the Penal Code was amended by the Criminal Law (Amendment) Act No.5 of 2003, was twelve months imprisonment. The appellant, who had been fined 30,000/- was liable, in default, to imprisonment for only twelve months. It was therefore wrong for the appellant to have been sentenced, in default, to three years imprisonment.

When the Criminal Law (Amendment) Act No.5 of 2003 was enacted, it amended Section 28 of the Penal Code. Now a person who is fined Sh.30,000/- is liable, in default, to imprisonment for term not exceeding six months.

For the above reason the default imprisonment term of three years ordered by the trial magistrate is set aside and is substituted by six months imprisonment.

The appellant, who has already served this term, is hereby released from prison unless he is otherwise lawfully held. It is so ordered.

Dated, signed and delivered this 27th August 2003.

A.G.A. ETYANG

JUDGE