

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NO. 214 OF 2002

GEORGE KAGUORA NDUATI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant had been charged for the offence of assault causing actual bodily harm contrary to Section 251 of the Penal Code.

The facts of the prosecution case as stated in the Charge Sheet are as follows:

“On 27 th May, 2002 at Modern Farm Lane in Nakuru District within Rift Valley Province, the appellant unlawfully assaulted Nancy Nyambura Nduati thereby occasioning her actual bodily harm.”

On 15th July, 2002, the appellant appeared before Mrs. Ndeda, Chief Magistrate, Nakuru and pleaded “guilty” to the charge. He was convicted and sentenced to 4 years imprisonment. The learned trial Magistrate considered the past record and mitigating factors.

The appellant has only appealed against sentence – terming the same to be excessive and indicating that he was a computer student. The state through Mr. Oriri Onyango – Provincial State Counsel has not opposed the appeal on sentence.

Considering the total circumstances, it is apparent that the sentence was excessive – though lawful. Apparently, the appellant is remorseful and has learnt his lesson after being in jail for over one year.

In view of the above, the Court in its discretion, hereby reduce the sentence to the period already served. The appeal succeeds to that extent. Accused should be released forthwith unless lawfully held.

MUGA APONDI

JUDGE

Judgment written, read, signed and delivered in open Court.

MUGA APONDI

JUDGE

5TH NOVEMBER, 2003

5.00 P.M.