

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

APPELLATE SIDE

CRIMINAL APPEAL NO. 155 OF 2000

(From Original Conviction and Sentence in Criminal Case No. 1590 of 2000 of the Senior Principal Magistrate's Court at Kitui: Njeru Ithiga Esq. on 23.10.2000)

WAMBUA MUTUNGA ::::::::::::::::::::::::::::::: APPELLANT

VERSUS

REPUBLIC ::::::::::::::::::::::::::::::::::::::: RESPONDENT

Coram: J. W. Mwera J.

Appellant not wishing to be present

Orinda State Counsel for Respondent

C.C. Muli

J U D G E M E N T

The appellant pleaded guilty to a charge under S. 234 Penal Code in that on 10.10.2000 at Murundi village, Changwithya, Kitui he unlawfully did grievous harm to Benedetta Kamene Wambua. Son on 23.10.2000 he was ordered to serve 3 years imprisonment. The Learned Trial Magistrate opted not to impose strokes. In his petition of appeal the appellant raised matters amounting to mitigation in that the complainant, apparently a neighbour on whose land the appellant's animals had trespassed, had followed him to his home hurling rebukes and insults at him. That he desired the disagreement between the two to be resolved at home and that the sentence was excessive and harsh for the named man with a family. The plea of guilty which appears quite properly taken was supported by the Learned State Counsel who termed the sentence as deserved and not harsh. The facts were clear that the appellant beat up the complainant when she asked why he allowed his animals to trespass over her shamba. By this assault the complainant lost two (2) upper jaw molars and bled much. The appellant admitted facts. The conviction was proper.

The charge under S. 234 Penal Code if proved carries a life term in prison with or without strokes of the cane. The appellant got 3 years and the Learned Trial Magistrate was kind enough not to impose the strokes. This sentence remains undisturbed.

In the sum this appeal is dismissed in its entirety.

Judgement accordingly.

Delivered on 12th June 2001.

J. W. MWERA

JUDGE.