

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MOMBASA
APPELLATE SIDE

CRIMINAL APPEAL NO.573 OF 2000

(From Original Conviction and Sentence in Criminal Case No.3747 of 2000 of the Chief Magistrate's Court at Mombasa –F.N. Muchemi, Miss – SPM)

CHITI MWACHITI NGOME.....APPELLANT

=V E R S U S=

REPUBLIC.....RESPONDENT

J U D G E M E N T

This is an Appeal against sentence only.

The Appellant pleaded guilty to two Counts; one of Assault Causing Actual Bodily Harm contrary to Section 251 of the Penal Code, the other Grievous Harm contrary to Section 234 of the Penal Code. The particulars were that he did on 10.11.00 at Matumbi Village, Makamini Location, Kwale assault and grievously harm two brothers. He used an offensive weapon, a knife to inflict injuries on those complainants and there was medical confirmation of the degree of injuries inflicted. The Appellant accepted that the attack was unlawful.

Before the Lower Court the Appellant pleaded that he was remorseful and blamed satan for the offences. Before me on Appeal he pleaded that he was sick and had now reformed having learned his lesson in prison since he was jailed on 28.11.00. He is now serving a 12 month sentence for the Assault and 3 years for grievous harm both terms running concurrently. He also said he had a wife and children. That however should have been the reason for not involving himself in criminal activities if he cared for them.

This Court in its Appellate jurisdiction would normally not interfere with sentences of the Lower Court unless it is evident that the court overlooked some material factor or acted on the wrong principle or the sentence is manifestly excessive in view of the circumstances of the case.

The maximum sentence under Section 251 is 5 years with or without corporal punishment while that under Section 234 is life imprisonment with or without corporal punishment. They are no doubt viewed as offences of grave seriousness as they involve personal violence. In this case the Appellant used a knife to cause the injuries complained of and that alone aggravates the offence since it could have resulted in even more serious consequences. Incidents where one human being, for whatever reason, picks up an offensive weapon to threaten the life of another human being must be deterred by the courts. The sanctity of human life must be seen to be protected by punishing offenders appropriately. Each case must in the end however depend on its own circumstances.

The Appellant herein pleaded guilty and saved the court's time. He was a first offender and looks youthful. The circumstances surrounding the offence do not appear to have been contemplated as there was a quarrel between two different brothers and then a brawl which led to a fight. Before me the Appellant says he has reformed and will not repeat the offence. In all the circumstances I would review the sentence by setting it aside and substituting it as follows:-

- 1) On Count 1: the Appellant to pay a fine of Kshs.3000, in default to serve 6 months imprisonment.
- 2) On Count 2: Appellant to serve 24 months in prison. If the fine is not paid the prison sentences

shall run concurrently from the date of conviction by the Lower Court.

To that extent only the Appeal succeeds.

Dated this 31st day of July, 2001.

P.N. WAKI

J U D G E