



REPUBLIC OF KENYA



**Hassan v Republic (Criminal Appeal E027 of 2021)
[2023] KEHC 20619 (KLR) (4 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20619 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL APPEAL E027 OF 2021**

SM GITHINJI, J

JULY 4, 2023

BETWEEN

ATHMAN HASSAN APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. Athman Hassan was charged with the offence of Grievous harm, contrary to Section 234 of the [Penal Code](#).
2. The particulars of this offence being that on the May 29, 2020 at Tchundwa village Lamu East Sub-County, within Lamu County, the appellant unlawfully did grievous harm to Bwana Maktubu.
3. The appellant in this case is an in law to PW3. The victim is a cousin to the said witness. On May 29, 2020 the victim who offered evidence as PW1 was seated with his friends who are PW3, PW4 and another called Athman. They were at Ibarini area. At around midday, the appellant herein emerged out of blue armed with a panga and for unknown cause, without uttering a word, cut the victim with it in the left wrist before he vanished. The victim fell down as a result. Those present together with some others who turned up administered first-aid on him before he was rushed using a boda boda to King Fahd Hospital. The victim was admitted till May 31, 2020 when he was referred to Mpeketoni for stitching of tendons and Ligaments. The said tendons and Ligaments were indicated to have been beyond repair at the time.
4. On May 29, 2020 in the afternoon the appellant had gone to Kizingitini police station and reported that he had been attacked at his home at Tchundwa. He did not disclose who had attacked him. He was searched and a knife was recovered. He was placed in police cells. The police investigated the case and noted someone had been cut. The appellants home had been torched by irated mob. The victim's P3 form was filled on June 2, 2020. The medical officer classified the degree of injury as grievous.



5. The appellant was then charged. The appellant in his defence stated that the victim wanted to kill him 3 years ago. He was injured and treated. The victim vanished and when he returned he found the appellant was still alive. He went to appellant's home to kill him. The appellant was outside fetching water. His house was torched. They met along the way. The appellant could not control his anger. The two fought. He injured his hand as he suffered an eye injury. He was surprised that it was him who was charged and not the alleged victim (Complainant in this case-PW1).
6. The trial court evaluated the evidence and found that the prosecution had established the charge against the appellant beyond reasonable doubt. The appellant was accordingly convicted of the offence and sentenced to serve 7 years imprisonment.
7. The appellant in his Memorandum of appeal raised what he refers to as 'mitigation grounds of appeal' and pleads for a lenient sentence, of a community service order.
8. The prosecution opposes the appeal on the ground that the sentence of 7 years imprisonment for the offence is fair. They relied on the case of *Benard Kimani Gacheru -v- Republic (2002) eKLR*.
9. I have considered the charge, evidence adduced by the prosecution witnesses, the appellant's defence, judgment by the lower court and sentence meted; the grounds of the appeal and submissions.
10. Though the appeal is against the sentence, of which is a plea for a non-custodial sentence by the appellant on indicated mitigating factors, I have evaluated the evidence and have satisfied myself that the offence against the accused was proved by the prosecution beyond reasonable doubt. The conviction is therefore right.
11. On sentence, the offence of grievous harm carries a maximum sentence of life imprisonment. The appellate court does not interfere with the discretion of the trial magistrate on sentencing, unless it is satisfied that the trial court acted upon some wrong principles or overlooked some material factors and arrived at a sentence that is manifestly excessive in view of the circumstances of the case, as was held in the case of *Republic-VS- Sher Sherky, (1912) CCA 28 TLR 364*.
12. The seven (7) years imprisonment meted by the trial court was to run from the date of arrest which shows he took care of the period spent in remand. The sentence is within the law and reasonable given the circumstances of the case. I find no ground that would warrant me to interfere with it in favour of the appellant. The appeal therefore lacks merit and is hereby dismissed.

Judgment read and signed in the open court this 4th day of July 2023.

HON S M GITHINJI

JUDGE

In the presence of Ms Mkongo for the state and the appellant in person.

HON S M GITHINJI

JUDGE

