



**Madegwa v Republic (Criminal Appeal 16 of 2018 & 132 of 2019
(Consolidated)) [2023] KEHC 20585 (KLR) (21 July 2023) (Judgment)**

Neutral citation: [2023] KEHC 20585 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL APPEAL 16 OF 2018 & 132 OF 2019 (CONSOLIDATED)**

WM MUSYOKA, J

JULY 21, 2023

BETWEEN

HESBON MADEGWA APPELLANT

AND

REPUBLIC RESPONDENT

*(Appeal from judgment by Hon. EK Malesi, Senior Resident Magistrate,
SRM, in Kakamega CMCCRC No. 4447 of 2016, of 30th October 201)*

JUDGMENT

1. The appellant, Hesbon Madegwa, had been convicted by the trial court, on October 30, 2017, of causing grievous harm, contrary to section 234 of the *Penal Code*, cap 63, Laws of Kenya. He was sentenced to 10 years imprisonment, on January 22, 2018.
2. Both appeals arise from that conviction and sentence. The appellant is only challenging the sentence. Indeed, at the trial he admitted the offence, saying that he had only come to the rescue of his brother, who was being beaten by PW1, and that, as it was night-time, he did not even realise that he had cut the complainant, PW1.
3. He has placed on record written submissions, which are undated. They are more of a plea in mitigation than submissions. He pleads that he did not intend to harm the complainant, that he was young then, that he is remorseful and says that he will go for reconciliation.
4. I have considered the facts of the matter. It would appear that the dispute that led to the injury was between PW1 and someone else, and the appellant happened at the scene in response to a distress call, and does not appear to have had intended to injure PW1. He has admitted the act, and has suggested reconciliation. The 2 are related, being cousins. Reconciliation should be promoted, for the sake of family cohesion.



5. I note that the appellant has served about ½ of the 10 years up to now. I shall, in the circumstances, order that he be released to a probation officer, to serve up to 3 years of the remainder of his sentence under probation. The probation office shall assist to reconcile the appellant and PW1. It is so ordered.

DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAKAMEGA THIS 1ST DAY OF JULY 2023.

W MUSYOKA

JUDGE

Mr. Erick Zalo, Court Assistant.

Appearances

Hesbon Madegwa, the appellant, in person.

Ms. Kagai, instructed by the Director of Public Prosecutions, for the respondent.

