



**Wafula v Republic (Criminal Appeal E052 of 2023)
[2024] KEHC 15973 (KLR) (12 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 15973 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
CRIMINAL APPEAL E052 OF 2023
REA OUGO, J
NOVEMBER 12, 2024**

BETWEEN

GEORGE WANJALA WAFULA APPELLANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Appellant was convicted of the offence of assault by the trial court and sentenced to three years imprisonment.
2. His appeal is solely on sentence. He states that the sentence meted against him was excessive. Under section 251 the sentence provided in law is five years. He was denied the option of fine.
3. The Respondent opposed the appeal stating that the sentence provided in law is five years and the sentence of three years was within the law. Reliance was made on the case of Bernard Kimani Gacheruvs- Republic (2002) eKLR. It is further submitted that the appeal hasn't brought some material facts that might have been overlooked by the lower court and acted on wrong principles.
4. I have considered the grounds, the submissions, and the law plus the facts that were before the trial court.
5. There is no dispute that the case against the appellant was proved beyond reasonable doubt. The conviction was proper. On sentence, the appellant contends that the three (3) years sentence was harsh and that the sentence was without an option of fine. Sentencing is at the discretion of the lower court. Under Section 251 of the Penal Code, one found guilty of the offence of assault can be sentenced to up to five (5) years imprisonment. The trial court in sentencing the appellant noted that the Appellant was arrogant and violent and that he attacked a teacher within the school compound before school children indeed his acts were unwarranted. However, in my view, the sentence of a custodial sentence



only in the circumstances was excessive. The Appellant has sought an option for a fine. The offence of assault is classified as a misdemeanor in law.

6. In considering the appropriate sentence, I will give the appellant the option of a fine. The sentence of three imprisonment is set aside and I substitute it with the sentence of a fine of Kshs. 100,000/- in default three (3) years imprisonment. The period spent in remand shall be taken into account. The Appellant has a right of appeal within 14 days.

DATED, SIGNED, AND DELIVERED AT BUNGOMA ON THIS 12TH DAY OF NOVEMBER, 2024.

R. E. OUGO

JUDGE

In the Presence of: -

Appellant in person -Present

Miss Kibet -For the Respondent

Wilkister - C/A

