



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

CRIMINAL APPEAL NO 4 OF 2020

EMMANUEL KIPLAGAT.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original sentence of Hon V.O. Amboko, RM, dated 8th October 2019 in Criminal Case No 329 of 2019 in the Senior Principal Magistrate's Court at Kabarnet, Republic v Emmanuel Kiplagat)

JUDGMENT

In his petition to this court the appellant has appealed against his sentence of five years' imprisonment in respect of the offence of grievous harm contrary to section 234 of the Penal Code (Cap 63) Laws of Kenya.

In his mitigation in this court, the appellant has submitted as follows. He is a first offender. He is remorseful. The complainant is willing to resolve this matter outside court. The appellant was living with his aged mother and pregnant wife, who were dependent upon him as he was the sole bread winner.

Furthermore, the appellant has urged the court to reduce his sentence so as to enable him to be released from prison.

Mr. Mong'are for the respondent submitted that the offence is serious and should have attracted a more severe sentence. He otherwise submitted that the sentence was merited.

In sentencing the appellant, the trial court took into the following matters. The injuries inflicted upon the victim were of an aggravated nature, since they included a skull fracture. The court then proceeded to impose a 5 year of imprisonment to serve as deterrent to others.

I have re-assessed the sentence as a first appeal court. I find that the victim sustained fractures in the skull, fractures in the left arm, fractures in the right leg amongst other injuries. These were inflicted by a machete. As a result of the attack, the victim became unconscious for three days and was admitted in Kabarnet hospital for those three days.

I have borne in mind that the appellant was a first offender and that he was the sole bread winner of his family.

After taking into account all of the foregoing matters, I find that the sentence imposed was merited in view of the vicious attack and the injuries inflicted upon the victim.

I must point out that it was not proper for the prosecutor to submit that the offence was serious and that should have attracted a more severe sentence. I am guided in this regard on the decision of the High Court on *Shiami v. Republic (1972) EA 557*, in which it was held that it is not for a Prosecutor to tell the court that an offence is serious as this is for the court to decide. I have therefore ignored that submission by the prosecutor in that regard.

In the premises, the appellant's appeal fails and is hereby dismissed in its entirety.

Judgment dated, signed and delivered in open court at Kabarnet this 9th day of February 2021.

J M BWONWONG'A

JUDGE

In the presence of:

Mr. Kemboi Court Assistant.

Appellant in person present.

Mr. Mong'are for the Respondent.