



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KABARNET**

**CRIMINAL APPEAL NO 44 OF 2019**

**RAPHAEL CHEPKONGA CHEPTOO.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**(Being an appeal from the original sentence of Hon V.O.Amboko, RM, dated 18<sup>th</sup> July 2019**

**in Criminal Case No 156 of 2019 in the Senior Principal Magistrate's Court at Kabarnet.**

**Republic v Raphael Chepkonga Cheptoo)**

**JUDGMENT**

In his petition to this court the appellant has appealed against his sentence of four 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. He was living with his aged mother and pregnant wife, who were dependent upon him as he was the sole bread winner.

Furthermore, he has stated that he has acquired a number of skills while in prison including attaining grade 3 in carpentry and joinery. He has also attained grade 2 in upholstery. Additionally, he is now a pastor having attained and has been awarded a certificate in Bible studies.

The appellant has also stated that his health has deteriorated due to harsh conditions in prison. He also fears that he might contract corona in prison. The appellant has urged the court to release him so that he can apply the skills he has acquired for the benefit of his family and the public.

Mr. Mong'are, counsel for the respondent did not take any position in respect of sentence. Instead he left the matter to the court to decide.

In sentencing the appellant, the trial court took into account that he was a first offender and that he was unremorseful and that he had a negative attitude towards the community. Additionally, the trial court also took into account that the victim had several stab wounds. Furthermore, the trial court took into account that the assault was of a violent nature and that the appellant ought not to be rehabilitated within the community.

With the foregoing in mind, the trial court sentenced the appellant to four years' imprisonment after taking into account that: "*The period the accused has been in remand to be considered as time served.*" I find that the trial court did not have in mind the provisions of section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya, which mandatorily require a court to take into account the period an accused has been in custody when sentencing him. It nevertheless came to the right conclusion.

I have independently re-assessed the sentence imposed as a first appeal court. As a result, I find that the trial court exercised its sentencing discretion properly.

I therefore find that there is no basis to interfere with the sentence imposed.

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 9<sup>th</sup> 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.