



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KABARNET

CRIMINAL APPEAL NO. 210 OF 2017

LABAN KIPNGOK.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the original conviction and sentence delivered on 6th November 2017

by Hon. J. L. Tamar, PM, in Eldama Ravine Principal Magistrate's Court

in Criminal Case No. 648 of 2017, Republic versus Laban Kipngok)

JUDGMENT

1. The appellant has appealed against his conviction and sentence of 15 years' imprisonment in respect of the offence of grievous harm contrary to section 234 of the Penal Code (Cap 63) Laws of Kenya; following his plea of guilty to the charge.
2. In this court the appellant has raised four grounds of appeal in his petition.
3. In ground 1 the appellant has faulted the trial court in law and fact for failing to appreciate that the appellant was intoxicated at the time of the commission of this offence.
4. In ground 2 the appellant has faulted the trial court in law and fact for failing to appreciate that section 200 (3) of the Criminal Procedure Code (Cap 75) Laws of Kenya was not followed by the second succeeding magistrate, when he took over the trial of his case.
5. Manifestly excessive sentence in the circumstances of the case.
6. In ground 4 the appellant has faulted the trial court for failing to take into account that he was remorseful.
7. The appellant has also filed written submissions in support of his appeal; in view of what will appear from the judgement herein below; I find it unnecessary to consider all those submissions
8. When the appellant pleaded guilty, the trial court did not caution him that the offence carried a sentence of life imprisonment; before formally entering an order of conviction. The failure to caution the appellant makes the plea of guilty equivocal.
9. In the premises, the appeal succeeds with the result that the conviction and sentence are hereby quashed. In view of this, I find that it is unnecessary to consider the other grounds of appeal.
10. The only issue that falls for consideration is whether I should order a re-trial.
11. In deciding whether to order for a re-trial or not, I have taken into account the following matters. First, the offence carries a sentence of life imprisonment. The appellant has been in custody for slightly over 3 years and three months. The appellant was a first offender.
12. The complainant, who was the father of the appellant sustained a fracture in the right thigh following being injured by the appellant and that he was admitted in hospital for 13 days.

13. Furthermore, the complainant is still undergoing treatment; since he has not completely healed.

14. On the totality of those matters, I find that it is in the interests of justice that there be a re-trial of the appellant before another magistrate of competent jurisdiction pursuant to the provisions of section 354 (3) (a) (i) of the Criminal Procedure Code.

15. In the interim period, the appellant will remain in custody until he is produced in a court of competent jurisdiction for plea; as soon as possible.

JUDGMENT DATED, SIGNED AND DELIVERED IN OPEN COURT AT KABARNET THROUGH VIDEO CONFERENCE ON THIS 12TH DAY OF MARCH, 2021.

J M BWONWONG'A

JUDGE

In the presence of:

Mr. Sitienei and Mr. Kemboi Court Assistants.

Appellant present in person.

Mr. Mong'are for the Respondent.