



**Mweteri & another v Republic (Criminal Appeal 72 & 73 of 2018
(Consolidated)) [2021] KEHC 7261 (KLR) (6 May 2021) (Judgment)**

Joseph Mweteri & another v Republic [2021] eKLR

Neutral citation: [2021] KEHC 7261 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
CRIMINAL APPEAL 72 & 73 OF 2018 (CONSOLIDATED)**

HPG WAWERU, J

MAY 6, 2021

BETWEEN

JOSEPH MWETERI 1ST APPELLANT

FRANCIS MAINA 2ND APPELLANT

AND

REPUBLIC RESPONDENT

*(From original Conviction and Sentence in Nanyuki
CM Criminal Case No 529 of 2018 – D Bosibori, RM)*

JUDGMENT

1. The Appellants herein, Joseph Mweteri And Francis Maina, were convicted after trial of assault causing actual bodily harm contrary to section 251 of the [Penal Code](#). It was alleged that on 25/03/2018 at Mutethia Village, Kithithina Location in Buuri Sub-County within Meru County, they jointly and unlawfully assaulted one Triposa Kathure thereby occasioning her actual bodily harm. On 09/10/2018 they were each sentenced to five (5) years imprisonment.
2. The Appellants appealed against both conviction and sentence; however, at the hearing of the appeal both stated that they were satisfied with the conviction and that they wished to pursue only their appeals against sentence. Their appeals against conviction were therefore marked withdrawn.
3. As for the sentence meted out to each Appellant, it is to be noted that the offence under section 251 of the [Penal Code](#) is a misdemeanor, not a felony. Secondly, five (5) years imprisonment is the maximum sentence that can be imposed for the offence.
4. The Appellants were first offenders. The injuries suffered by the complainant were minor, comprising bruises and tenderness on the mouth, inflicted by blunt trauma. There is absolutely no justification



in the trial court's record for imposition of the maximum custodial sentence for a misdemeanor. Apparently the only reason for it was that the complainant was a woman.

5. The sentences imposed upon the Appellants were manifestly excessive and cannot be allowed to stand. The same are hereby set aside. The Appellants have been in prison since 09/10/2018, a period of about two (2) years and seven (7) months. That is more than adequate punishment for the misdemeanor they committed. I will therefore sentence them to imprisonment for the time already served.
6. The upshot is that the Appellants shall be set at liberty forthwith unless otherwise lawfully held. It is so ordered.

DATED AND SIGNED AT NANYUKI THIS 5TH DAY OF MAY 2021

H P G WAWERU

JUDGE

