

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL APPEAL NO. 13 OF 2020

EVANS WAFULA NYONGESA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an appeal from the judgement and sentence of Hon. G. P. APONDI - SRM., dated 23rd January, 2020 in the CM'S Court at Bungoma in Criminal Case No.66 of 2020, Republic vs Evans Wafula Nyongesa)

JUDGEMENT

The appellant was convicted on his own plea of guilty to a charge of assault and was sentenced to 3 years' imprisonment.

Initially he appealed against conviction and sentence. Subsequently he abandoned his appeal against conviction and he is now appealing against sentence only.

In his mitigation to this court he has stated that he has apologized to the complainant. He has also urged the court to impose a non-custodial sentence.

Furthermore, he has informed this court that he has undergone various Christian and vocational training while in prison. As a result, he has achieved skills and experience which will enable him to contribute in the development of his family and spiritually; if he is given a chance.

Ms. J. Tarus counsel for the Respondent has supported the sentence. She has submitted that the trial court properly exercised its discretion.

I have considered the sentencing notes of the trial court and the mitigation of the appellant in this court. I find that the appellant pleaded guilty and has been in custody since 23rd January, 2020, which translates to a period of about 2 years. I find that the sentence of 3 years is excessive in the circumstances of this case.

In the premises, the sentence imposed is hereby reduced to the sentence that he has already served, with the result that he is hereby set free unless he is held on other lawful warrants.

JUDGMENT SIGNED, DATED AND DELIVERED IN OPEN COURT AT BUNGOMA ON THIS DAY OF THE 10TH SEPTEMBER, 2021.

J. M. BWONWONG'A

JUDGE

In the presence of

C/A – Kizito

The appellant

Ms. Nyakibia for the Respondent