



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

HIGH COURT CRIMINAL APPEAL NO. 47 OF 2020

SAMWEL KIBET CHEPKILISAPPELLANT

VERSUS

REPUBLICRESPONDENT

(Appeal against Sentence of the Hon. G. Adiambo - PM Kimilili Court)

J U D G M E N T

1. Upon arraignment, **Samwel Kibet Chepkilis**, the Appellant, was charged with the offence of causing grievous harm contrary to section 234 of the Penal Code. Particulars being that on the 18th February, 2020 at about 10.00 pm at Labaa village Chemwesus Sub-Location, in Mount Elgon Sub-County, within Bungoma County did Grievous harm to **Christine Chemos** by biting and cutting the said **Christine Chemos**.

2. He admitted the charge at the outset, was found guilty, convicted and sentenced to serve three (3) years imprisonment.

3. Aggrieved, the appellant appeals against the sentence on the grounds that: he is a first offender; the act in question resulted because of domestic issues, he has dependents, a wife and two (2) children who solely depend on him and he is remorseful.

4. The appeal was canvassed by way of written submissions. It was argued by the Appellant that he was drunk at the time of the offence, he has been rehabilitated, and undergone guiding and counselling, he is remorseful and his family needs his support.

5. The State opposed the appeal. It was argued that the sentence meted out considering the grave injuries that the complainant sustained was lenient.

6. That the complainant herein was the Appellant's wife. He attacked her following suspicion of infidelity. That the trial court was elaborate in what it took into consideration while sentencing the Appellant. It took into consideration a social inquiry report that was filed.

7. Principles of interfering with sentence by an appellate court were stated in the case of **Benard Kimani Gacheru -vs Republic Cr. Appeal No. 188 of 2000 as follows:-**

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account, some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already stated is shown to exist.”

8. The Appellant complains that the sentence was excessive. Section 234 of the Penal Code provides that:

Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.

9. In the case of **Ogolla S/O Owour -Vs - Republic (1945) EACA 270**. The court of appeal stated that:-

“ The court does not alter a sentence unless the trial Judge has acted on wrong Principles or overlooked some material factors”.

10. According to information availed by the Probation Officer that was in regard to the relationship between the Complainant and

Appellant, the incident altered the Complainant's perspective of life such that she became depressed. The Appellant was stated to be a person of violent behavior who could not heed advice.

11. It is stated and admitted that the Appellant used a weapon (panga) to inflict some of the injuries that the complainant sustained. The objective of sentence includes punishing the offender to deter him from re-offending, to ensure he is rehabilitated and to protect the victim from being harmed by the offender.

12. Having taken all these factors into consideration, the trial court did not fall into error as the sentence imposed was not harsh and/or excessive in the circumstances.

13. The upshot of the above is that the appeal is unmeritorious. Accordingly, it is dismissed.

14. It is so ordered.

L.N. MUTENDE

JUDGE

10.9.2021

DATED, SIGNED AND DELIVERED VIRTUALLY AT BUNGOMA THIS 10th DAY OF SEPTEMBER, 2021

L. N. MUTENDE

JUDGE.

10.9.2021