



IN THE HIGH COURT OF KENYA

AT MERU

CORAM: D.S MAJANJA J.

CRIMINAL APPEAL NO. 46 OF 2019

BETWEEN

PATRICK KAGUNDU MUNGIRA.....APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from the original conviction and sentence of Hon. L. Ambasi dated 28th February 2019 at the Magistrate's Court at Meru in Criminal Case No. 1676 of 2016)

JUDGMENT

1. From the amended supplementary grounds of appeal filed on 28th April 2020, this is an appeal regarding sentence only. The appellant, **PATRICK KAGUNDU MUNGIRA**, was convicted of one count of causing grievous harm contrary to **section 234** of the **Penal Code (Chapter 63 of the Laws of Kenya)** and sentenced to life imprisonment. It was alleged in the charge that he caused grievous harm to Alice Kathambi on 16th August 2016 at Mburikene Village of Imenti North Sub-County within Meru County.
2. The facts of the case were that the appellant and complainant were husband and wife but were not on good terms. It appears they had a disagreement and she went to her parents' home. He followed her there on the next day and found her. She had locked herself in the house. He broke into it and slashed her with a sword, on the face, legs and amputated her left hand at the elbow.
3. Since this is an appeal on sentence, the court's jurisdiction to review the sentence is circumscribed. It has jurisdiction to interfere with a sentence imposed by the trial court if it is satisfied that in arriving at the sentence, the trial court did not take into account a relevant factor or that it took into account an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive (see **Wanjema v Republic [1971] EA 493**).
4. Before sentencing, the trial magistrate ordered a Sentencing Review report which showed that he had been assaulting the deceased in the past and she had sustained serious injuries including loss of her teeth. He had also been threatening his sisters if they revealed what he had been doing to his wife. The report also painted the appellant as a serial offender who would cause harm if released on a non-custodial sentence.
5. By **section 234** of the **Penal Code**, a person who unlawfully commits the offence of grievous harm is liable to imprisonment for life. Thus life imprisonment is the maximum sentence as such due allowance ought to have been made for this, noting what was stated in **Josephine Arissol v R [1957] EA 447** that, "*The general rule is that a maximum sentence should not be imposed on a first offender*".
6. In mitigation, the appellant asked for forgiveness and admitted that he had assaulted the complainant. The trial magistrate in the sentencing notes merely stated, "*Mandatory life imprisonment.*"
7. The trial magistrate committed an error in principle first by imposing the life sentence for a first offender and second, by noting the sentence was mandatory when it was not. The court therefore failed to take into account relevant facts and circumstances, aggravating and mitigating factors, that would have guided the court to impose an appropriate sentence.
8. I have considered the record and the conclusion is that this is a case of domestic violence. The facts disclose that the appellant was a man of violent tempers who deliberately went to the complainant's parents' home and proceeded to inflict deadly violence on her. The gravity of the offence, particularly the violence inflicted on a marriage partner excludes the possibility of a non-custodial sentence. The court cannot condone such violence. On the other hand, the appellant was considered a first offender who expressed remorse. He is entitled to the benefit of a sentence lesser than life imprisonment.

9. Taking into account all these factors, I allow the appeal on sentence only and quash the sentence of life imprisonment. I substitute it with a sentence of **twelve (12) years imprisonment**. The sentence shall run from the date of arraignment, that is, **25th August 2016**.

DATED and **DELIVERED** at **NAIROBI** at this **14th** day of **MAY 2020**.

D.S MAJANJA

JUDGE

Appellant in person.

Ms Nandwa, Prosecution Counsel, instructed by Office of Director of Prosecutions for the respondent.