



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO. 6 OF 2019

BETWEEN

GIDRAF MWANGI THUO ALIAS

GIDRAF IRUNGU MWANGI APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an Appeal from the original conviction and sentence in the Principal Magistrate's Court at Kangema Cr. Case No

506 of 2017 delivered by Hon. P.M. Kiama (SPM) on 25th January, 2019).

JUDGMENT

1. The Appellant herein was charged with the offence of grievous harm contrary to Section 234 of the Penal Code. The particulars of the offence were that on the 8th Day of October, 2017 at about 2330 hours at Wanjohi Village within Murang'a County, with others not before Court, unlawfully did grievous harm to Robert Runo Muruba by cutting him with a panga.
2. Upon a full trial, the Appellant was found guilty and convicted accordingly. He was sentenced to serve twenty (20) years imprisonment.
3. He was dissatisfied with both the conviction and sentence against which he preferred the instant Appeal in a Petition of Appeal filed on 6th February, 2019. However, on 1st September, 2020 he filed fresh grounds of Appeal titled 'Mitigation' alongside hand written submissions in which he only appealed against the sentence. He also orally confirmed at the hearing of the Appeal that he would only be pursuing the Appeal against the sentence, thus both grounds of Appeal and submissions offered mitigation.
4. He submitted that he was remorseful, that at the time of arrest he was only 24 years old and was married with a young child whom he did not play a part in bringing up and that the prison conditions in this Covid-19 pandemic era exposes him to an infection. He added that he has undergone several artisan courses whilst in the prison which have rehabilitated and reformed him. He stated that if released from prison, he would abide by the law and become a good citizen.
5. He thus urged for clemency from the Court.
6. Learned State Counsel, for the Respondent opposed the Appeal. She submitted that, considering the nature of the offence which was serious and the sentence imposed which in her view was lenient, the Court should uphold the sentence.
7. I have accordingly considered the respective rival submissions. Section 234 of the Penal Code provides that:

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

8. The brief background of this case is that on the material date, the complainant who testified as PW1 was walking home at around 10.30 P.M. He had to pass by near the Appellant's home on his way home. On arrival at the gate of the Appellant's home, the Appellant hit him on the chest with a stone. After PW1 called out his name, he picked up a panga and cut him four times on the forehead, six times on the left hand and once on the right hand. When he came to on 10th October, 2017, he found himself at Kenyatta National Hospital where he had been referred to from Murang'a County Hospital. He was discharged from the hospital on 16th October, 2017. He was informed that a report of the incident had been made by his parents at Kirogo Police Post by his parents. Earlier that evening the Appellant had met the complainant in a bar and asked him to buy him alcohol but the complainant declined.

9. The cut wounds on the head were deep and exposed brain matter. The injury was described as open skull fracture. He also sustained deep cut wounds on the left hand, one of which exposed the bone. As a result, he could not use his fingers. He also suffered memory loss. The injuries were classified as grievous. Various medical reports including a P3 Form were adduced in evidence to support the nature of the injuries.

10. In his mitigation before the trial Court, the Appellant asked leniency adding that he did not want to do what he did.

11. A look at the mitigations the Appellant offered in this Court are a clear testament that he does not regret that the complainant sustained such maiming injuries. He seems more concerned about his welfare and not the fact that the complainant will have to contend with permanent disabilities for the rest of his life. From the analysis of the circumstances of the case, it is clear that the aggravating factors far outweigh the mitigating factors. For this reason, I feel that a deterrent sentence is warranted.

12. The fact that the country and the entire world are faced with the challenge of the Covid-19 pandemic is not good reason to warrant the Appellant released from prison. That also applies to the fact that, irrespective of his training in artisan skills, he should shoulder the responsibility for the mistake he made. I also have regard to the fact that the Appellant attacked the complainant just because he refused to buy him alcohol. Giving is a matter of choice and not compulsion. The Appellant could not force the complainant to give what he did not think he deserved. He made a wrong and evil decision to revenge by causing grievous harm to the complainant.

13. All the same, I bear in mind that he was a first offender and a reasonable penalty should be one that serves the purpose of deterrence as opposed to hardening an offender. Consequently, I am of the view that the 20 years jail term was an excessive sentence.

14. In sum therefore, I set aside the 20 years jail term and substitute the same with 13 years imprisonment. It is so ordered.

DATED, DELIVERED AND SIGNED AT MURANG'A THIS 8TH DAY OF SEPTEMBER, 2020.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *Appellant in person.*

2. *Miss Gichuru for the Respondent.*