



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

HCCRA NO. 14 OF 2017

ANDREW CHEPTOGOCH.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[An appeal from the original conviction and sentence in criminal case no. 55 of 2017 in the Principal Magistrate's Court at Kabarnet delivered on the 24th day of May, 2017 by Hon. S.O. Temu (PM)]

RULING

1. The appellant appealed from the sentence of imprisonment for 4 years for the offence of grievous harm contrary to section 234 of the Penal Code imposed by the trial Court on 24/5/2017.
2. By written submissions filed in Court, the appellant urged that the sentence was harsh; that he was the bread winner of his family; and that he had learnt useful skills in prison, pleading for a chance to build the Nation through his acquired skills in tailoring and carpentry. He also urged that he was a first offender and requested that the Court to pass a "lesser sentence."
3. The DPP did not oppose the appeal pointing out that the appellant had at the time of hearing on 4/10/18 served 1 year 5 months, which was a substantial portion of the sentence and he could serve the remainder of the sentence on probation/community server subject to a favourable report.
4. The pre-sentence Probation Officer's Report is negative for non-custodial sentence pointing out to lack of any efforts towards reconciliation by the appellant's kin by payment of the expenses incurred by the victim while on treatment for "permanent leg impairment."
5. I consider this to be an appropriate case, in line with Article 159 of the Constitution for the Court to promote reconciliation as an Alternative Dispute Resolution Mechanism. It appears that the victim of the grievous harm is open to reconciliation and only opposes reduction of the sentence because, "the appellant and his kin [are] not making any effort to pay for the expenses incurred while on medication." Having looked at the evidence before the trial Court, the Court finds that the appellant had properly abandoned the appeal from conviction, as there was overwhelming evidence to support the conviction.
6. For purposes of attempting reconciliation between the appellant and the victim complainant, the Court will defer the determination on the appeal from sentence to allow for the reconciliation, which may include payment of compensation in damages for the injury suffered by the complainant.

ORDERS

7. Accordingly, for the reasons set out above, the matter is deferred pending attempt at reconciliation.
8. Mention for sentencing on a date to be fixed by the Court.

Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF JANUARY 2019

EDWARD M. MURIITHI

JUDGE

Appearances:

Appellant in person.

Ms. Macharia, Assistant DPP for the Respondent.