

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NANYUKI

CRIMINAL APPEAL NO 120 OF 2017

DAVID MAINA NYAWIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from original Convictions and Sentence dated 17/11/2017 in Nanyuki CM Criminal Case No 139 of 2017– W J Gichimu, PM)

J U D G M E N T

1. The Appellant, **DAVID MAINA NYAWIRA**, was convicted after trial of *grievous harm* contrary to **section 234** of the *Penal Code*. It was alleged in the charge that on 26th January, 2017 at *Checkers Club* in *Nanyuki Town* in *Laikipia County*, he unlawfully did grievous harm to one **ROBERT MAMBI MWANIKI**. On 17th November, 2017 he was sentenced to 5 years imprisonment. He has appealed against the sentence only.
2. I have read the written “plea of mitigation” that the Appellant handed in at the hearing of his appeal. I have also considered the submissions of the learned prosecution counsel who opposed the appeal.
3. The maximum sentence for grievous harm under the law is imprisonment for life. The Appellant got only 5 years. It was a lawful sentence.
4. According to the medical evidence placed before the trial court, the grievous harm that the Appellant inflicted upon the complainant was a fracture of the skull caused by a blunt object, with bleeding on the membrane covering the brain.
5. A fracture to the skull is a serious injury; in the present case the injury was no doubt administered with intent to cause at the very least grievous harm, which it did. The complainant was admitted in ICU for 5 days.
6. In his plea of mitigation to the trial court, the Appellant offered no remorse. He only stated that he was the son of a single mother with a wife and child.
7. In the circumstances of this case, I am not satisfied that the sentence imposed was manifestly harsh or excessive. On the contrary, it was quite lenient, and the Appellant was lucky.
8. I find no merit in the appeal against the sentence. It is hereby dismissed. It so ordered.

DATED AND SIGNED AT NANYUKI THIS 2ND DAY OF APRIL 2019

H P G WAWERU

JUDGE

DELIVERED AT NANYUKI THIS 3RD DAY OF APRIL 2019