



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

HCCRA NO. 40 OF 2018

DANIEL YEGON ALIAS KIMASAI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

[An appeal from the original conviction and sentence of the Principal Magistrate's Court at Kabarnet Cr. Case no. 533 of 2017 delivered on the 13th day of February, 2018 by Hon. N.M. Idagwa, RM]

JUDGMENT

Appeal

1. The appellant was convicted on 13/2/18 and sentenced to imprisonment for 5 years for the offence of grievous harm contrary to section 234 of the Penal Code. In the appeal, the appellant principally urges mitigating circumstances for purposes of reduction of sentence citing bread-winner role for a family of 2 children whose mother left them “*after parting ways*” with the appellant. He filed written submissions setting out the mitigating circumstances.
2. The DPP opposed the appeal and made oral submission as follows:

“DPP

Appeal is opposed. The appellant was convicted of grievous harm contrary to section 234 and sentenced to serve 5 years on 13/2/18. The appellant has only served 1 year out of 3 years 4 months with remission. He has not served adequate time to justify Community Service Order and I request the Court to dismiss the appeal and allow the appellant to serve his sentence. The complainant also needs time to heal considering the nature of the injuries sustained.”

Evidence

3. I have considered the evidence before the trial Court and find in the testimony of the complainant Pw1 that he was injured on the head and mouth after the appellant used a “*stick to hit my head and ribs and used a panga on the side of my mouth and head*”, which injuries were observed by the appellant’s employer Pw2 and confirmed by the Clinical Officer Pw3 that “*[complainant] had a cut wound on the face, right forehead about 6 cm in length. There were no cuts. He had a fracture on the mandible which caused an obvious deformity on the right lower mandible x-ray conducted confirmed the fracture.*”
4. In his defence, the appellant alleged that the complainant had been “*stealing at my home then he attacked me*”, and explained that he was carrying the panga to protect himself. “*On arrival at the Chief I found the man had already gone there to report me,*” he said.

Analysis of Evidence

5. It is clear that appellant had attacked the complainant for whatever reason. The explanation that the complainant was stealing at his home was not raised at all in cross-examination of the complainant Pw1 and is obviously an afterthought. There was also no explanation why the appellant did not report the matter to the police, if the complainant had already reported to the Chief who appeared to side with the complainant. I find the charge of Grievous harm proved against the appellant as charged. The complainant said the appellant whom he knew as a neighbor had gone to the home where the complainant was employed by Pw2 and asked where his employer’s cattle were, and he said “*I told him they had gone to graze, the accused started to hit me...*” The accused partly confirmed the complainant’s story when he said “*on 20/8/2017 I woke up in the morning and went to look for my cow. I found it two kilometers away. I brought it home.*”

Conviction and sentence

6. I would find that the appellant was properly convicted for grievous harm contrary to section 234 of the Penal Code. However, as regard the sentence and taking note of the injuries on the complainant, I would find the sentence of imprisonment for 5 years excessive, and pursuant to the principle in **Wanjema v. R** (1971) EA 493 reduce it to imprisonment for a term of 4 years to be reckoned from the **13/2/18** the date of conviction and sentence in the trial Court.

Order accordingly.

DATED AND DELIVERED THIS 17TH DAY OF JUNE 2019

EDWARD M. MURIITHI

JUDGE

Appearances:

Appellant in person.

Ms. Macharia, Ass. DPP for the Respondent.