



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KABARNET**

**HCCRA NO. 53 OF 2018**

**ADAM AMDANY.....APPELLANT**

**=VERSUS=**

**REPUBLIC.....RESPONDENT**

***[An appeal from the original conviction and sentence of the Senior Principal Magistrate's Court***

***at Kabarnet Criminal Case no. 1121 of 2016 delivered on the 29<sup>th</sup> day of November, 2017***

***by Hon.N. M. Idagwa, SRM]***

**JUDGMENT**

1. This Court has taken the view in several previous decisions that the constitutional imperative of Article 159 (2) (c) of the Constitution that in exercising judicial authority, the Courts and tribunals shall be guided by the principle, among others, that “(c) *Alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanism shall be promoted*” the criminal process and applies both at trial and appellate levels.

2. In this case, the complainant, who is a relative of the appellant in their relation of father-son according to Kalenjin custom – the appellant’s father’s mother and the complainant’s mother having been from the same clan, has confirmed he has forgiven the appellant and that he seeks no compensation for his injury from which he has recovered and which was subject of the assault charge, herein.

3. The DPP does not object to the process of reconciliation and had in fact initially agreed that the appellant having already served a substantial portion of his sentence may serve the remaining term on a non-custodial sentence subject to a favourable pre-sentence Probation Officer’s Report.

4. The Court takes into account the private and personal nature of the grievous harm charge, the forgiveness by the complainant, the no-objection by the DPP and the non-aggravated nature of the injuries from which the complainant professes to have fully recovered, and the fact that the appellant has served a substantial portion of the 4 year sentence imposed by the trial Court.

**Order**

5. Pursuant to Article 159 (2) (c) of the Constitution, the Court promotes the reconciliation between the appellant and the complainant herein and, as a consequence, the appellant who has served a substantial portion of his sentence shall have the sentence reduced to the time already served, so that he is released from custody unless he is otherwise lawfully held.

6. The appellant, having fully served a consecutive prior sentence of imprisonment for 1 year since **6/11/17** for the offence of escape from lawful custody, shall forthwith be released from custody without any further bar on account of the sentence under the charge of escape from custody in KBT. PMC Cri. No. 682 of 2017.

*Order accordingly.*

**DATED AND DELIVERED THIS 10<sup>TH</sup> DAY OF JULY 2019.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Appellant in person.

Ms. Macharia, Ass. DPP for the Respondent