

IN THE HIGH COURT OF KENYA

AT KAKAMEGA

CORAM: D. S. MAJANJA, J.

CRIMINAL APPEAL NO. 150 OF 2018

BETWEEN

EMMANUEL NDETA ATSWENJE.....APPELLANT

AND

REPUBLICRESPONDENT

(Being an appeal from the original conviction and sentence by Hon. F. M. Nyakundi, RM, dated 11th October, 2018 in Mumias Magistrates Court Criminal Case No. 535 of 2018)

JUDGMENT

1. The appellant, **EMMANUEL NDETA ATSWENJE**, was charged and convicted of the offence of intimidation contrary to **section 238 (1)** of the **Penal Code (Chapter 63 of the Laws of Kenya)**. The particulars of the offence were that on the 29th March, 2018 at Shieyala Village, Indangalasia Location in Matungu Sub-County within Kakamega County, with intent to cause alarm to Salome Athieno Atswenje, threatened to cause unlawful injury to Salome Athieno Atswenje with blows.
2. At the hearing of this appeal, the appellant informed the court that he was only contesting the sentence and urged the court to exercise leniency.
3. Under **Section 238 (1)** of the **Penal Code**, the maximum sentence prescribed is 3 years' imprisonment. The appellant was sentenced to 3 years' imprisonment which to my mind constitutes an error of principle as the court ought not impose a maximum sentence on a first offender.
4. I however agree with the trial magistrate that the facts of the case disclosed a person who does not respect his mother. The probation report revealed violence towards his family hence non-custodial sentence was properly ruled out.
5. I therefore allow the appeal to the extent that the sentence of 3 years' imprisonment is quashed and substituted with a sentence of **eighteen (18) months** to run from the date on conviction before the trial court.

DATED and DELIVERED at KAKAMEGA this 3rd day of September 2019.

D. S. MAJANJA

JUDGE

Appellant in person.

Ms Ombega, Prosecution Counsel, instructed by the Director of Public Prosecutions for the respondent.