



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

CRIMINAL APPEAL NO. 167 OF 2017

JOSEPH MWENDO NDTIVA.....APPELLANT

-VERSUS-

REPUBLIC.....RESPONDENT

(Being an appeal against conviction and sentence in the Senior Resident Magistrate's Court at Kilungu in Criminal Case No. 128 of 2017, delivered by Hon. P. Wambugu (SRM) on 23rd March, 2017)

JUDGEMENT

1. The appellant was charged with offence of grievous harm contrary to section 234 of the Penal Code. Particulars being that on the 8th day of March, 2017 at around 1100 hrs at Kandolo village, Sultan Hamud Location, Mukaa District within Makueni County assaulted her actual Juliana Nditiva Muia occasioning her actual bodily harm using a panga and severed her arm totally, her being your mother.
2. He was taken to court on 9/3/2017 for plea and after charges were read to him, he pleaded guilty to the charge.
3. The facts were relied to him to the fact that on 8/3/2017 at 7 am the complainant Juliana was in her shamba. She had 2 workers. The appellant who is her son followed her as she was harvesting maize. The appellant was armed with a panga. He asked her for his phone. Before she could answer, he attached her. He cut her on the head severally. She lifted her hand to protect her face. The appellant cut the left hand and severed it thus it dropped on the ground. She screamed. Good Samaritans came and saved her. They took her to hospital.
4. The appellant was arrested by members of public and taken to Sultan Hamud Police Station.
5. When asked to answer to the facts above, the appellant stated that, ***"facts are correct as explained. I have nothing to add."***
6. He was then convicted on his own plea. The prosecution asked court to treat appellant as a first offender.
7. In mitigation he stated that, ***"I have nothing to say."*** He was then sentenced to serve 60 years in jail. This was on 23/3/2017.
8. On 6/4/2017 he filed instant appeal which was in form of ***"mitigation for leniency"*** in which he sought court to reduce the 60 years jail term.
9. During the hearing of the appeal he only stated that he relied on his grounds on mitigation. His grounds are that he pleaded with court to review sentence imposed and give a better term under the provisions of Article 165(7) of the Constitution of Kenya.
10. The Judiciary Sentencing Guidelines Policy, dictate that where the accused person pleads guilty to save time and is a first offender, the court should consider awarding a lesser sentence than it would normally do in cases where there was full trial and the accused is a repeated offender inter alia.
11. The appellant was jailed 60 years. He is 36 years. By the time he clears 60 years jail term, he would be if blessed to live to the age of 96 years. Of course a sentence of 60 years imprisonment by any stretch of imagination amounts to life imprisonment.
12. Guided by the aforesaid principles of sentencing, I am inclined to temper justice with mercy and interfere with the sentence meted out to the appellant.
13. I thus make the following orders:

- i. The sentence of 60 years is set aside and substituted with a jail term of 25 years imprisonment.***

ii. The conviction is confirmed as it was not challenged.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MAKUENI THIS 11TH DAY OF OCTOBER, 2019.

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C. KARIUKI

JUDGE