



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL APPEAL NO. 90 OF 2017**

**TERESIA KABURA KAMURI.....1<sup>ST</sup> APPELLANT**

**RUTH WANGUI MBADI.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

***[Appeal from the original conviction in Criminal Case No. 367 of 2015 in the Chief Magistrate's Court at Murang'a by M. Wachira, Chief Magistrate, dated 23<sup>rd</sup> August 2017]***

**JUDGMENT**

1. The appellants were adjudged guilty of *causing grievous harm* to the complainant contrary to section 234 of the Penal Code. They were sentenced to *two years* imprisonment.
2. The particulars were that on 25<sup>th</sup> March 2015 at Mukuyu Estate within Murang'a County, they "*jointly and unlawfully did grievous harm to Mary Nyambura Kamau*".
3. The original petition of appeal challenged *both* the conviction and sentence. However, on 10<sup>th</sup> May 2018, the appellants *abandoned* their appeal on *conviction*. They unequivocally confirmed to the court that they wished only to challenge the *sentence*.
4. At the hearing of the appeal, the appellants pleaded for *leniency*. They were *remorseful* for their actions. They informed the court that they had learnt useful trades in prison in the last *nine months*. They also intended to continue with education upon release. The 2<sup>nd</sup> appellant is raising a young *child* in *prison*. From the record, the toddler was born in the course of the trial in the lower court. To be precise, on 28<sup>th</sup> January 2017.
5. In a synopsis, the entire appeal is a plea for *clemency*. The appeal is contested by the Republic. The case for the State is that the sentence was well within the law. I was implored to dismiss the appeal.
6. This is a first appeal to the High Court. I have re-evaluated all the evidence on record and drawn my own conclusions. *Njoroge v Republic* [1987] KLR 19, *Okeno v Republic* [1972] EA 32, *Kariuki Karanja v Republic* [1986] KLR 190.
7. The complainant (PW1) told the lower court that she was assaulted on her head and torso. *One* of her lower teeth was knocked *out*. That evidence was *corroborated* by PW4, Linus Muturi. He is a clinical officer. He examined the complainant on 25<sup>th</sup> March 2015. Her forehead and temporal areas were tender. She had pain in the trunk and chest wall; her lower *incisor tooth* was knocked out; and, her *molars* numbers 26, 37 and 38 were *loose*. He classified the injuries as *grievous harm*.
8. I thus find that the appellants were properly convicted of the offence of *causing grievous harm* contrary to section 234 of the Penal Code. In any event, the appellants *no longer* challenge their conviction.
9. I will now turn to the appeal on *sentence*. Section 354 (3) of Criminal Procedure Code provides that at the hearing of an appeal-  
  
"The court may then, if it considers that there is no sufficient ground for interfering, dismiss the appeal or may.....(ii) alter the finding, maintain the sentence, or with or without altering the finding reduce or increase the sentence; or....."  
  
10. In *Macharia v Republic* [2003] 2 E.A 559 the Court of Appeal had this to say on sentencing-

*“The Court would not alter a sentence on the mere ground that if the members of the court had been trying the appellant they might have passed a somewhat different sentence and it would not ordinarily interfere with that discretion exercised by a trial judge, unless it was evident that the judge acted upon some wrong principles or overlooked some material factors. ...The sentence imposed on an accused person must be commensurate to the moral blameworthiness of the offender and it was thus not proper exercise of discretion in sentencing for the Court to have failed to look at the facts and circumstances of the case in their entirety before settling for any given sentence.”*

11. The learned trial Magistrate considered that both appellants were *first offenders*. She took into account the *mitigation* tendered. The 1<sup>st</sup> appellant pleaded for *leniency*. The 2<sup>nd</sup> appellant told the trial court she had a small baby. The plea for mercy before this court must be looked at through those lenses.

12. Despite the fresh clamour for leniency, this was a *felony*. Section 234 of the Penal Code provides that any person who commits grievous harm to another is liable to imprisonment for *life*. I am alive that the vicious attack on the complainant knocked out her tooth. The assault was unwarranted. But I have considered that the two appellants are young adults. They have learnt a powerful lesson. They henceforth undertake to keep to the straight and narrow. The 2<sup>nd</sup> appellant is raising a *young child* in prison. Prison is not the place to raise an innocent minor.

13. I will accordingly temper justice with a little mercy in this case. The sentence is *set aside*. The appellants shall now serve *one year imprisonment*. For the avoidance of doubt, the new sentence shall take effect from 23<sup>rd</sup> August 2017, the date of the original conviction.

It is so ordered.

**DATED, SIGNED and DELIVERED at MURANG'A this 17<sup>th</sup> day of May 2018**

**KANYI KIMONDO**

**JUDGE**

**Judgment read in open court in the presence of-**

1<sup>st</sup> and 2<sup>nd</sup> appellants.

Ms. Gichuru for the Republic.

Mr. Kiberenge and Ms. Dorcas, Court Clerks.