



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAROK**

**HIGH COURT CRIMINAL APPEAL NO 94 OF 2017**

**REUBEN LANGAT KIPKOECH .....APPELLANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

***(Being an appeal from the original conviction and sentence dated 19/7/2017 in the Chief Magistrate's court at Narok in Criminal case No. 1754 of 2015 R. v. Reuben Langat Kipkoech)***

**JUDGEMENT**

1. The appellant has appealed against his sentence of ten (10) years imprisonment in respect of grievous harm contrary to section 234 of the Penal code (Cap 63) Laws of Kenya.
2. The state has supported the sentence.
3. In this court the appellant has raised six grounds in his petition, which are mitigating factors.
4. In condensed form the mitigating factors are that the sentence is excessively harsh and unjust in view of the fact he was a first offender. Additionally, he has stated that he is the sole breadwinner of his two school going children, who depend upon him for their school fees and upkeep.
5. Furthermore, the appellant has stated that he is very remorseful and that his step mother(the complainant) has now forgiven him. He has therefore urged the court to quash his sentence and set him free.
6. The facts upon which the appellant was convicted were that he cut off the complainant's leg which resulted in the amputation of the right leg below the knee at Tenwek hospital. The attack was sudden and totally unprovoked. At the time of being examined, the complainant was in crutches.
7. In sentencing the appellant to ten years imprisonment, the trial court found that the offence "*was most callous and heartless,*" which might have led to the death of the complainant. It also found that the maximum sentence provided for under section 234 of the Penal Code was life imprisonment.
8. The trial court in its consideration of the two (2) years that the appellant had been in remand custody, pronounced itself as follows: "*Accused is sentenced to a term of imprisonment of 10 years. The time he has been in remand custody will be considered time served and shall be deducted from the 10 years.*"
9. In this regard, section 333(2) of the Criminal Procedure Code (Cap. 75) Laws of Kenya requires the court to take into account the remand period in sentencing an accused person. It seems the trial court was alive of its duty, but it fell short of giving effect to it. This was an error of law on the part of the court.
10. Furthermore, the trial court erred in law in failing to take into account that the appellant was a first offender.
11. I have considered the foregoing matters. I have also taken into account that the appellant has been in prison custody since 19/7/2017, which is now a period of about one year and four months.
12. I have also borne in mind that this attack was an unprovoked attack, with the result that the complainant now has to walk using crutches. Although sentencing is a matter for the discretion of the trial court, it committed 2 errors.
13. The upshot of the foregoing is that this court is entitled to correct those two errors that were committed by the trial court by interfering

with the sentence imposed.

14. In the light of the foregoing considerations, the sentence of ten years imprisonment is hereby reduced to six years imprisonment, which now has to be served by the appellant.

Judgement delivered in open court this 16<sup>th</sup> day of October, 2018 in the presence of the appellant and Ms Nyaraita for the respondent.

**J. M. Bwonwonga**

**Judge**

**15/10/2018**