



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO 157 OF 2017**

**JOHN MBUGUA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**[An appeal from the original sentence and conviction criminal case no 752 of 2013 in the Principal Magistrate's Court at Eldama Ravine delivered on the 6<sup>th</sup> day of July, 2015 by Hon. R.Yator SRM]**

**JUDGMENT**

1. The appellant was convicted for the offence of grievous harm contrary to section 234 of the Penal Code. The appellant was sentenced to serve imprisonment for a term of (10) years. The appellant challenged the sentence of the trial court by an appeal on the 6<sup>th</sup> day of June, 2017. The appeal was initially opposed by the DPP.

2. The appellant made written submission of appeal on mitigation and stated as follows:

1. That I am remorseful and repented for what happened.
2. I am a breadwinner of my family.
3. That my ailing father depends on me for medication and upkeep.
4. That I have children who are at school.
5. That I pray to this court to admit me on probation or community service order.
6. That I pray to this hon court for a lenient sentence to allow me to attend to my family problems.
7. That I will adhere to all rules and conditions while admitted on probation or C.S.O.

3. The DPP did not object to the mitigation and the court upon hearing the appeal this court made orders to the Probation Officer to make a presentence report. On the 9<sup>th</sup> day of July, 2018, Mr. Oloo the Sub-county probation officer made report on recommendation that the Appellant be placed on probationary sentence.

4. The DPP submitted that the injury caused by the appellant to the boy was serious and it was important to get a victims impact statement of the condition of the child and the opinion of the family of the victim. According to the report the DPP urged that there was need to hear from the victim and the family. Therefore, the DPP made request for a further Probations Officer's Report.

5. The court ordered a second report to be made by the Probation Officer and summons to issue to the auntie of the child served through the probation officer to attend court and give account of the hospital bills.

6. The second probationary report dated 3<sup>rd</sup> July, 2018 recommended that:

**"RECOMMENDATION**

*Your honour, before this court is a 58 year old male who is remorseful for the offence committed. He is a first offender who has done a lot of soul searching and resolved to observe decency. He is pleading for leniency for the honourable court with absolute promise*

of not to commit such grievous act in future.

Following the circumstances which led to the commission of the offence and having brought bare the various sentiments made by different people as well as taken note of the grounds for an appeal. **It is my humble submission to this honourable court that the accused may be considered for a non-custodial sentence, that is: probation, so as to benefit from guidance and counselling to be provided by well-endowed Probation Officer in this field.**

**However, the compensation being sought may be decided as deemed fit by the honourable court.**

T.O.J Oloo

Sub-County Probation Officer

Koibatek/Mogotio

03/07/2018”

7. The complainant’s aunt failed to come to court after several attempts to get her to clarify the expenses at the hospital. The DPP, therefore, left the matter to the court.

### **Compensation**

8. The complainant’s injury was as recorded in the P3 form as one of “*deep cut on tendon achilis*”, necessitating “*tendon repair*” in theatre and classified in the said medical examination form as “*maim*”. Pursuant to section 175(2) of the Criminal Procedure Code, this court considers the sum of Ksh.100,000/= is adequate as compensation in damages to remedy the convicted person’s liability for the complainant’s injury. In accordance with section 175(6) of the CPC, the payment of the said sum shall be enforced as a judgment in civil proceedings, if the money remains unpaid upon expiry of time limited for his appeal against this order.

### **Orders**

9. Accordingly, for the reasons set out above, the court makes the following orders:

**1. In accordance with section 354 (3) (b) of the Criminal Procedure Code, the Court, while affirming the conviction of the appellant for the offence of grievous harm alters the nature of the sentence so that the appellant, in addition to the imprisonment for over three years and 4 months already served, is placed on Probation for a period of 12 months from today.**

**2. The appellant shall also pay to the complainant the sum of Ksh.100,000/= which the court finds, in the circumstances of the case, to be suitable compensation in terms of section 175(2) of the Criminal Procedure Code.**

10. In accordance with section 349 of the Criminal Procedure Code, there is Right of Appeal within 14 days.

Order accordingly.

**DATED AND DELIVERED THIS 10<sup>TH</sup> DAY OF DECEMBER, 2018**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Appellant in person.

Ms. Macharia Assistant DPP.