



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MARSABIT

CRIMINAL APPEAL NO. 01 OF 2016

GALGALO ADAN.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(From the original conviction and sentence in criminal case No. 909 of 2014 of the Principal Magistrate's Court at Marsabit by BOAZ M OMBEWA– Ag. Principal Magistrate)

JUDGMENT

The appellant, **GALGALO ADAN**, was charged with an offence of assault causing actual bodily harm contrary to section 251 of the Penal Code.

The particulars of the offences were that on 20th November 2014 at Marsabit G.K prison in Marsabit County, unlawfully assaulted **SALAD GODANA** occasioning him actual bodily harm.

He pleaded guilty to the offence. He was convicted and sentenced to five years imprisonment.

He now appeals against both the conviction and sentence.

The state opposed the appeal through Mr. Chirchir, the learned counsel.

The facts of the prosecution case were briefly as follows:

On the 20.11.2014 the complainant was taking his breakfast at the Marsabit G.K Prison. When the appellant passed where the complainant was seated, his porridge poured on the appellant. The appellant was irritated by this and assaulted the complainant.

The appellant having pleaded guilty, it is not open to him to raise grounds that touch on facts. He is estopped by section 348 of the Criminal Procedure Act from doing so. It provides:

No appeal shall be allowed in the case of an accused person who has pleaded guilty and has been convicted on that plea by a subordinate court, except as to the extent or legality of the sentence.

In the instant case, I will endeavour to establish whether the plea was unequivocal and whether the sentence meted out was lawful and whether it was excessive.

I have perused the original record and the typed copy of proceedings. I have noted that after the appellant pleaded guilty to the offence, the facts were read and he confirmed that they were correct. The plea was

unequivocal.

Section 251 of the Penal Code provides as follows:

Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.

The appellant was sentenced to the maximum penalty provided by the law. Being a first offender, the sentence was on the higher side. After factoring in the fact that he never used a weapon, other than his fist, in the attack, I will reduce the sentence to two years imprisonment from the date he was sentenced by the trial court. To this extent his appeal succeed.

DATED at Marsabit this 22nd day of February 2017

KIARIE WAWERU KIARIE

JUDGE