



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT SIAYA

CRIMINAL APPEAL NO. 3 OF 2017

(CORAM: J.A. MAKAU - J.)

FELIX OTIENO OLUOCH.....APPELLANT

VS

REPUBLIC.....RESPONDENT

(Being an Appeal against the sentence dated 20.12.2016 in Criminal Case No. 1250 of 2016 in Bondo Law Court before Hon. E. N. Wasike - SRM)

J U D G M E N T

1. The appellant **FELIX OTIENO OLUOCH** was charged with an offence of grievous harm contrary to **Section 234 of the Penal Code**. The particulars of the charge are that on 25th day of September 2016, at around 5:30pm at Lusi village, Rarieda Sub County within Siaya County, jointly with another not before court unlawfully did grievous harm to **PAUL OUMA OGOLLA**.
2. The appellant pleaded guilty to the offence and upon facts being given by the prosecution, the appellant admitted the facts as correct. He was consequently convicted and sentenced to serve 12 months imprisonment.
3. Aggrieved by the sentence the appellant filed this appeal against sentence setting out the grounds of appeal. However, at the hearing, he relied on the supplementary grounds of appeal being as follows:-
 - a) *That the Learned Trial Magistrate erred in law and in fact in convicting the appellant herein when the evidence produced in court was not significant to warrant such a conviction.*
 - b) *That the Learned Trial Magistrate erred in law and in fact in convicting the appellant herein when the evidence adduced in court was not collaborated.*
 - c) *That the Learned Trial Magistrate erred in law and in fact in convicting the appellant herein despite taking the appellant's mitigation in consideration.*
 - d) *That the Learned Trial Magistrate erred in law and in fact when he failed to take all matters raised by the appellant and taking in consideration that the appellant was a student and a first offender.*
 - e) *That the Learned Trial Magistrate erred in law and in fact in sentencing the appellant herein when the offence did not warrant such a harsh sentence.*

4. At the hearing of the appeal, the appellant stated that his appeal is against sentence only. He relied on his written submissions in which he urged that he is a student; that he has already served 3 months and now he has 9 months to serve the balance of the sentence; that due to his incarceration he is unable to proceed with his secondary school education and he won't be able to prepare for the forthcoming Form Four examination in 2017 and as such he prayed for non-custodial sentence.

5. M/S Odumba, Learned State Counsel submitted that the sentence meted against the appellant is legal, however, she left the issue of sentence to the Court as sentencing is at the discretion of the court.

6. **Section 234 of the Penal Code** under which the appellant was charged provides as follows: -

234. Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.

7. The facts of the case are as follows: on 25th September 2016, the complainant in this case Paul Ouma Ogolla was from his home heading to his village and whilst on the way, he met three people who confronted him and started assaulting him using kicks and blows. The three people then pushed him on the ground. In the process, the complainant lost two teeth. The complainant tried to raise alarm and in the process, the assailants hit him with a plastic pipe and warned him not to step in that village. The three people then ran away but the complainant was able to identify the two accused persons currently before court. He went and reported the matter at Aram Police Station where he was issued with a P3 form, that was filled at Madiany Sub-County Hospital. On 19th December 2016, the two accused persons were traced and arrested by officers at Aram and were charged accordingly with the present offence. A P3 form dated 25th September was produced as P.exhibit 1.

8. I have very carefully considered the sentence meted against the appellant. The sentence is lawful and as provided under **Section 234 of the Penal Code**. I have considered the circumstances surrounding the commission of the offence, that the appellant is a first offender, he has served 3 months, part of the sentence to date, that he is a student and wishes to proceed with his education, however as, the offence committed is serious. I find the appellant needs counseling to help him rehabilitate.

9. The upshot is the conviction is upheld, sentence is set aside and substituted with 7 months non-custodial sentence during which period the appellant shall serve probation period under the supervision of the Probation Office, Siaya County.

DATED AND SIGNED AT SIAYA THIS 5TH DAY OF APRIL 2017

J.A. MAKAU

JUDGE

DELIVERED IN OPEN COURT.

In the presence of:

Court Assistants:

1. George Ngayo

2. Patience B. Ochieng

3. Sarah Ooro

Appellant: in person, present

M/S Odumba: for State

J.A. MAKAU

JUDGE