



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT BUNGOMA**  
**CRIMINAL APPEAL NO.50 OF 2016**

**EDWARD JUMA.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**JUDGEMENT**

1. This is an appeal arising from the Judgement of C.N. Oruo, in PM Cr. Case No.106 of 2016 where the appellant was convicted on his own plea of guilty, in a case of grievous harm contrary to section 234 of the Penal Code. The Appellant was accused of having assaulted his wife Catherine Naliaka on the 4<sup>th</sup> of February 2016 at Mukhe area Sirende location in Bungoma.
2. The trial Court in arriving at its decision on sentence relied on a pre-sentencing report. The appellant was sentenced to 5 years imprisonment.
3. Being aggrieved by the sentence the appellant preferred this appeal on grounds that;
  - He was not conversant with the Court language
  - The trial Court did not warn him of consequences of admitting to the charge.
  - Sentence imposed was high.
  - He is a sole bread winner of the family
  - The trial Court erred in failing to give him time to psychologically prepare for the conviction and sentence and He urged for a non-custodial sentence.
4. The Prosecution urged for dismissal of the appeal for lack of merit as the sentence was lawful as the appellant admitted the offence and he was convicted on his own plea of guilt.
5. The trial Court conducted the proceedings in Kiswahili; the charge was read out and explained in the said language, so were the particulars of the offence and in my view the ground that the appellant did not understand the language use is without merit. As for the fact that the Court did not warn the appellant of consequences of pleading, this indeed is not the mandate of the Court. The appellant is expected after reading of the plea, on his own if unrepresented or with the aid of Counsel where he is represented to decide whether to plead guilty or otherwise. The Court as an arbiter cannot tell him how to plead. Did the Court err in failing to give the appellant time to prepare for the outcome of the case psychologically or otherwise. This again the Court cannot be blamed for. One must take responsibility for his action. The appellant having committed the crimes ought to have expected dire consequences and on receiving the same cannot blame the Court for having promptly discharge its duty.
6. The appellant is not a suitable candidate for a non-custodial sentence due to his past conduct. The trial Court requested for a pre-sentencing report that exposed the appellant to have absconded when placed on

probation in Cr. Case No.328/2011 on a similar charge of assault against the same complainant who happens to be his wife. He is a repeat offender.

7. Cases of domestic violence are on the rise and in order to curb the vice adequate punishment must be meted out to offenders. Beating of a fellow human being is barbaric, archaic, backwards and has no place in a civilized society, it must be condemned in harsh terms.

In the circumstances I do not fault the trial Court for sentencing the appellant the 5 years.

I do affirm the sentence and dismiss the appeal.

DATED and DELIVERED at BUNGOMA this **4<sup>th</sup> day of May 2017**

**ALI-ARONI**

**JUDGE**