



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT CHUKA**  
**HCCRA NO.41 OF 2015**  
**(FORMERLY MERU HCCRA NO. 30 OF 2015)**

ABRAHAM NJOKA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

*(An Appeal from the Judgment and conviction of F.M. NYAKUNDI – R.M made on 8/9/2015 in Marimanti Principal Magistrate’s Court Criminal Case No. 78 of 2015).*

**J U D G M E N T**

1. On 5<sup>th</sup> August, 2015, Abraham Njoka, the Appellant was arraigned before the Principal Magistrate’s Court, Marimanti with the offence of grievous harm contrary to Section 234 of the Penal Code. It was alleged that on the 12<sup>th</sup> February, 2015, at Kanyoro Sub-location in Tharaka Nithi County the Appellant unlawfully did grievous harm to Janet Gatura Majira. The Appellant denied the charge but after trial, he was found guilty, convicted of the charge and sentenced to three (3) years.
2. Aggrieved by the said decision, the Appellant has appealed to this court on what he states to be mitigating grounds. In that document, the Appellant states that he seeks mercy from this court on the grounds that he has children who were left with his elderly mother and that his sentence should therefore be reduced. At the hearing of his appeal, the Appellant told the court that since he did not have remission and his wife had disappeared after his arrest, his sentence should be reduced; that he had spend or eight (8) months in remand before the trial was concluded. Mr. Ongige for the state opposed the appeal on the ground that the trial court had been guided by the pre- sentence report which was unfavourable to the Appellant. That the sentence of three (3) years was reasonable considering that the offence carries a life sentence.
3. This being a first appeal this court is enjoined to review and re-evaluate the facts in order to draw its own independent conclusions see **Ekeno .V. Republic [1972] EA 372**. However, in so doing this court must have in mind the fact that it did not see the witnesses testify to be able to gauge their demenour.
4. The prosecution case was that on the night of 12<sup>th</sup> February, 2013, the complainant (PW1) was in her kitchen cooking, the accused entered armed with a machete, a bow and arrows; he asked her why she had not educated him; he then cut her on the head; he went out and when she tried to flee he cut her on the shoulder and hands whereby she fell down and lost consciousness. She was rejected at Meru Level 5 and Chogoria Hospitals; she was finally admitted and treated at Kenyatta National Hospital for three (3) months. Benard Mati (PW2) was at home at the material time. He told the court that on the material night, the Appellant came to his mother’s kitchen and demanded from his step mother, the complainant,

the property the latter would have used to educate him; he then cut the complainant on the head whereby PW2 run away and hid in the bush. PW2 later called PW4 who sent a driver (PW5) with a vehicle. PW5 who came at about 5 am on 13<sup>th</sup> February, 2013, took the complainant to Meru Level 5 hospital. PW3 Dr. Esther Mbithi produced the P3 form (P Exh 1) which showed that the complainant suffered serious injuries as a result of the attack. The injuries were described as grievous harm.

5. In his defence, the Appellant told the court that on the material night, he was asleep when his child told him that the complainant had been attacked. In his view, he was framed because of some land dispute between him and his brothers including PW4. He told the court if he was the one who assaulted the complainant, he would have killed her completely. He admitted that it was the complainant who brought her up but that was because she had no child of her own.

6. The court has reviewed the evidence and the entire record. As already stated, the Appellant's ground of appeal is in the nature of a mitigation. He does not challenge the conviction. What he states is that because of his personal status, that he has children and one of his wives had disappeared after his arrest, there was no one to look after the said children. He has only sought that the sentence be reduced.

7. According to the evidence of PW3, when the complainant (61 years old) was examined on 9<sup>th</sup> June, 2015, she was found to have multiple cut wounds on the head, extensive healed multiple cut wounds on the upper part of the back and healed scars on both hands. She was walking on crutches. PExh 1 was produced to prove the injuries which were assessed as grievous harm. The complainant told the court that she was admitted in Kenyatta National Hospital for three (3) months between February and May, 2015. She had earlier on been rejected by both Meru Level 5 and Chogoria hospitals, respectively because of the serious nature of the injuries she had sustained from the attack. In this court's view, the offence of grievous harm had been fully proved.

8. Section 234 of the Penal Code provides:-

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

9. Despite the maximum sentence for the offence which the Appellant was convicted of being life, he was sentenced to only three (3) years. To this court's mind, there were no mitigating factors at the time of sentence to warrant the lenient sentence that was metted out to the Appellant. The Appellant is lucky to have escaped with such a light sentence. In his mitigation, he was not remorseful for the act of having attacked his own mother. The pre-sentence report itself was damning on him. This court does not find any mitigating factors to warrant interfering with the sentence of the trial court.

10. Accordingly, the Appeal is without merit and the same is hereby dismissed.

**DATED and DELIVERED at Chuka this 12<sup>th</sup> day of May, 2016**

**A.MABEYA**

**JUDGE**

**Judgment read and delivered in open court in the presence of all the parties.**

**A.MABEYA**

**JUDGE**

**12/5/2016**