



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT ELDORET

CRIMINAL APPEAL NO. 8 OF 2016

ELIUD KEMEI..... APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(An Appeal from the Judgment of the Resident Magistrate Honourable C. M WATTIMAH in Kapsabet Criminal Case No. 1384 of 2015, dated 22nd June 2015)

JUDGMENT

1. The appellant was convicted on his own plea of guilty with the offence of causing grievous harm Contrary to **Section 234** of the **Penal Code**. The particulars supporting the charge alleged that on the 15th June, 2015 at Kaptildil location within Nandi County, he unlawfully assaulted *Benedin Kemei* occasioning her grievous harm.
2. Following his conviction, the appellant was sentenced to serve two years imprisonment. He was dissatisfied with the sentence meted out against him by the learned trial magistrate hence this appeal.
3. In his petition of appeal filed on 22nd January, 2016, the appellant relied on four grounds in which he urged the court to set aside the sentence imposed by the trial court and substitute it with a non-custodial sentence mainly on grounds that the learned trial magistrate failed to consider his plea that he was remorseful and the circumstances that led to the commission of the offence; that his family and that of his wife has since reconciled and that the appeal should be allowed to cement family unity and cohesion; that he has learnt his lesson while in remand and he will not commit other offences in future.
4. While prosecuting his appeal, the appellant made brief oral submissions in which he reiterated his grounds of appeal. He further claimed that he was a father of two young children who depended on him.
5. The state is opposed to the appeal. Learned prosecuting counsel *Ms Moku* in her submissions urged the court to dismiss the appeal and uphold the sentence imposed by the lower court in view of the serious injuries that were occasioned to the victim of the offence. In addition she invited the court to note that the offence attracts a penalty of life imprisonment and that therefore the sentence of two years imprisonment was not only lenient but also lawful.
6. I have considered the grounds of appeal, the submissions made by the appellant and the state as well as the record of the lower court. The record shows that the appellant attacked his wife with a walking stick until she lost consciousness after she asked him for money to buy food for their children. As a result of the said attack, his wife sustained serious injuries which included a fracture of one tooth while other two teeth became loose. According to the P3 form which was produced as Pexhibit 2, she also sustained a

deep cut on the upper side of her head which was stitched.

7. It is trite that sentencing is at the discretion of the trial court. However, an appellate court can interfere with the sentence imposed by a trial court in appropriate cases.

8. The Court of Appeal in *Macharia V Republic (2003) KLR 115* enumerated the instances in which an appellate court can review or alter a sentence imposed by the trial court. It held as follows;

“ The court does not alter a sentence on the mere ground that if the member of the Court had been trying the appellant they might have passed a somewhat different sentence and it will not ordinarily interfere with the discretion exercised by a trial judge unless as was said in James v R, (1950) 18 EACA 147 “it is evident that the judge has acted upon some wrong principle or overlooked some material factors’ To this we would also add third criterion namely, that the sentence is manifestly excessive in view of the circumstances of the case”

9. The offence of causing grievous harm attracts a maximum penalty of life imprisonment. In this case, it is clear from the trial court’s record that the learned trial magistrate considered that the appellant was a first offender, his plea in mitigation and the injuries inflicted on the complainant before passing sentence against the appellant. In my view, she considered all the relevant factors that ought to guide a trial court in the exercise of its discretion in determining which sentence to impose in a particular case.

10. Given the foregoing, I find that the learned trial magistrate properly exercised her discretion in sentencing the appellant to two years imprisonment. The sentence is lawful and given the circumstances in which the appellant committed the offence against his own wife and the serious injuries she sustained as a result of his assault, I cannot say that the sentence was harsh or manifestly excessive. I therefore have no reason to interfere with the sentence imposed by the trial court. In the premises, I find no merit in this appeal and it is hereby dismissed.

It is so ordered.

C.W GITHUA

JUDGE

DATED, SIGNED and DELIVERED at ELDORET this 5th day of May, 2016

In the presence of:

The appellant

Ms. Oduor for the state

Naomi – Court clerk