REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

CRIMINAL APPEAL NO. 91 OF 2015

(Formerly Nakuru Criminal Appeal 190 of 2014)

(Being an appeal from original Conviction and Sentence in the Chief Magistrate's Court at Narok Criminal Case No. 1261 of 2013 Sitati – SRM)

PAUL SIRERE KULUO……...……..……....APPELLANT

-VERSUS-

REPUBLIC…….....……...RESPONDENT

J U D G M E N T

1. The Appellant herein is appealing against the sentence. His original Petition and what he subsequently filed as **"mitigational grounds of appeal"** set out his personal circumstances.

2. The Appellant was tried and convicted for the offence of Doing grievous harm Contrary to Section 234 of the Penal Code. In that on the 10th day of September 2013 at Kisiriri area in Narok North District within Narok County, he unlawfully did grievous harm to **Peter Ndirangu Gitau.**

3. The prosecution evidence was that the Appellant and Complainant were residents of Kisiriri, Narok. Prior to the date of the offence the Appellant's house was burned down. Seemingly, he suspected that Complainant was involved. He planned and executed a plan in which the Complainant to be attacked on 10/9/2013 by himself and two other men. The complainant sustained severe soft tissue and skeletal injuries.

4. The Appellant's defence at the trial sounded more like submissions but he too admitted that he and the Complainant had been engaged in an altercation following the arson attack on his house. He however denied the offence. In a well considered judgment the trial magistrate found the Appellant guilty and sentenced him to 10 years imprisonment.

5. The Appellant now urges the court to consider that he is a first offender, is sickly and has a family that depends on him. In his initial petition he complained that the sentence was excessive. Some of the mitigatory factors raised on his appeal were also raised before the trial court, and were considered. The court noted, as did the Director of Public Prosecution's submissions opposing this appeal, that the offence was motivated by a desire for revenge.

6. The P3 form completed at the Narok District Hospital in respect of the Complainant reflects several injuries including a deep cut wound on the head, fractures of both the right and left radius and ulna, as well as a cut on the right thigh. These were no doubt severe injuries.

7. The Appellate court will not interfere with the sentencing discretion of the lower court merely for the reason that it would in the circumstances have awarded a different sentence. In **Wanjema –Vs- Republic (1971) EA 493**, the Court of Appeal stated that:-

> **"[The] Appellate court should not interfere with the discretion which a trial court extended as to sentence unless it is evident that it overlooked some material factors, took into account some immaterial factors, acted on wrong principle or the sentence is manifestly excessive in the circumstances of the case." (See also Republic –Vs- Mohamedali Jamal (1948) 15 EACA 126)**

8. The trial court considered the mitigation of the Appellant. The Appellant has not furnished any material tending to show that the court overlooked a relevant factor or took into account an irrelevant one.

9. In light of the circumstances of the attack and serious injuries inflicted on the Complainant, the sentence awarded cannot be said to be excessive. I find no merit in this appeal and will dismiss it.

Delivered and signed at Naivasha, this **19th** day of **July, 2016.**

In the presence of:-

For the DPP : Mr. Koima

For the Appellant : N/A

C/C : Barasa

Appellant : present

C. MEOLI

JUDGE