

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERUGOYA

CRIMINAL APPEAL CASE NO. 18 OF 2015

CATHERINE NJERI MURIUKI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

Being an appeal from the judgment of the Principal Magistrate's Court (M. Onkoba), Gichugu Criminal Case Number 16 of 2014 delivered on 22nd May, 2015)

JUDGMENT

1. **CATHERINE NJERI MURIUKI** the appellant herein was charged with assault causing actual bodily harm contrary to **Section 251** of the **Penal Code** vide Gichugu Principal Magistrate's Criminal Case No. 16 of 2014. The facts as per the Charge Sheet presented in that court were that on the 7th January, 2014 at Kabare Location, Kirinyaga East Kirinyaga County she willfully and unlawfully assaulted one Janet Waruguru who is her mother thereby occasioning her actual bodily harm. She did deny the offence but after the trial, the trial court found her guilty convicted her and sentenced her to serve two years in prison. She was dissatisfied with both the conviction and the sentence and preferred this appeal.

2. At the hearing of this appeal however, the appellant abandoned her appeal on conviction and only asked this Court to reduce her sentence on the grounds that she has since reformed after one and a half years in prison. She also added that she has learnt or undergone vocational training in prison which she believes has made her acquire skills and knowledge on how to make ends meet and educate her children.

3. The brief facts about this appeal as per the evidence tendered by the prosecution showed that the Appellant on 7th January, 2014 at around 11.30 a.m. attacked her mother, Janet Waruguru (P.W.1) with a panga and cut her on the left ankle and caused other injuries on her. The injuries suffered were confirmed by the clinical officer – Mercy Wamuyu Gichuki (P.W.3) who tendered P3 as Prosecution Exhibit 1 and treatment chit (Prosecution Exhibit 2) which described the nature of injuries suffered. The Appellant in her defence admitted that there was altercation between her and her mother but denied that she had assaulted her. The trial court however, found her guilty after assessing the evidence tendered by the prosecution and sentenced her to serve two years imprisonment.

4. In her petition of appeal, the Appellant stated that she is a mother of two children who were left under the care of her mother and she expressed fears that the children may not be well taken care of. She also contended that the sentence was harsh given that she was a first offender and prayed for a lenient non-custodial sentence.

5. The Respondent opposed this appeal through the office of the Director of Public Prosecutions. The Respondent contended that the two years given was lenient because **Section 251** of the **Penal Code** prescribed five years. The Respondent further contended that the Appellant was not deserving any leniency for having assaulted her own mother.

6. I have considered this appeal and the response made by the State. The Appellant conceded that her conviction was correct. Her only contention is that because she has served 1 ½ years in prison and in that period she has undergone training and reformed, her sentence should be reduced to enable her to get something to do in her life and take care of her two children who are now in the care of her mother.

7. It is true that **Section 251** of the **Penal Code** prescribes a sanction of five years imprisonment for the offence of assault causing actual bodily harm which is a misdemeanor. The trial court in this case exercised its discretion after considering the mitigating circumstances and handed out two years imprisonment to the Appellant. I have considered the same circumstances. The Appellant assaulted her own mother with a panga and inflicted serious injuries. She ought to know that her actions were both despicable and unlawful.

8. It is also important to note that sentencing is a discretionary matter by a trial court where a sentence is lawful and a trial court has taken into consideration all relevant factors in mitigation, an appellate court would not interfere with the decision. In the case of **FRANCIS NKUNJA THARAMBA -VS- R [2012] eKLR** the Court of Appeal sitting in Nyeri made the following guiding observations:

“Sentencing is a discretionary act of the trial court even though the limits such as the maximum sentences and in some cases minimum sentences are prescribed by law, nonetheless, as to the exact sentence pronounced upon a convicted person, the trial court has in most criminal cases, the discretion to decide. That being the case, in law, the appellate court should not intervene in such an exercise of discretion by an inferior court unless it is demonstrated to it that the trial court has not exercised that discretion properly in that it has failed to consider matter it should have considered or that it has considered matters it should not have considered or that looking at the entire decision, it is plainly wrong. These are situations in law where the appellate court can intervene in the trial court’s exercise of discretionary power such as that of sentencing.”

In view of the above, this Court finds no basis for this appeal. The sentence meted out against the Appellant as indicated above was commensurate with her actions. She really needs to reflect and learn that what she did was clearly wrong. She is expected to obey and respect her mother leave alone assaulting her. In the premises I find no merit in this appeal. The same is dismissed.

Dated and delivered at Kerugoya this 8th day of September, 2016.

R. K. LIMO

JUDGE