

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CRIMINAL APPEAL NO 443 OF 2013

EPHANTUS KIMANI MUGO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

1. The Appellant was convicted upon his own plea of **grievous harm** contrary to **section 234** of the **Penal Code**. The particulars of the offence were that on 1st December 2011 at 8 pm at **Kiawanjugu Village, Gikandu Sub-location** in **Murang'a County**, he did grievous harm to one **Johnson Mugo Kangethe**. He was sentenced to serve **5 years imprisonment**. He has appealed only against that sentence.
2. His plea to court when presenting his appeal was that he was very sorry he committed the offence; that the complainant is his father; and that he committed the offence because of drunkenness.
3. Learned **Prosecution Counsel** opposed the appeal. He pointed out that the injuries inflicted upon the complainant were severe, and that therefore the sentence of 5 years imprisonment was quite lenient.
4. The facts given to the lower court and which the Appellant admitted were that the Appellant went to his father's house where he found him asleep in his bedroom. He threatened to kill him. He then dragged his father out of the bedroom while beating him and led him to the kitchen. There he picked up a burning piece of wood and used it to beat him some more. In the process the complainant was burned in the neck and face. The Appellant then rained more fist blows on his father's head and face. In the process he knocked out his two upper incisor teeth. The Appellant's mother raised alarm and neighbours came and saved the complainant from further beating.
5. The medical evidence placed before the trial court confirmed the injuries suffered by the complainant. Those injuries were indeed serious. He lost two teeth and suffered first degree burns on the neck and face. He also had multiple bruises and strangulation marks on the neck, an indication that the Appellant would probably have killed his father were it not for the intervention of neighbours. There is no evidence of any immediate provocation from the complainant for the attack. The fact that the Appellant may have been drunk is no excuse, and certainly not a mitigating factor.
6. Grievous harm is as serious an offence as manslaughter. It can attract imprisonment for life. The Appellant got 5 years. He was lucky as this sentence was manifestly lenient given the vicious attack upon his own father. I will not reduce it.
7. The appeal is dismissed. It is so ordered.

DATED AND SIGNED AT MURANG'A THIS 4TH DAY OF MARCH 2015

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 6TH DAY OF MARCH 2015