

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.63 OF 2013

(An Appeal arising out of the conviction and sentence of W. NGUMI – AG.SRM

delivered on 2nd April 2013 in Githunguri PMC. CR. Case No.355 of 2013)

PETER NGARUIYA NGUGI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant, Peter Ngaruiya Ngugi was charged with the offence of **causing grievous bodily harm** contrary to **Section 234 of the Penal Code**. The particulars of the offence were that on the 26th day of December 2012 at around 3:00 a.m. at Githunguri bus stage in Githunguri District with Kiambu County, the Appellant unlawfully did grievous harm to James Muigai Muiruri. He was also charged with the offence of **assault causing to actual bodily harm** contrary to **Section 251** of the **Penal Code**. The particulars were that on the 26th of December 2012, at 3:00 a.m. at Githunguri bus stage within Githunguri District within Kiambu County, the Appellant jointly with others not before court unlawfully assaulted JAMES NJUE CHENGE thereby occasioning him into actual bodily harm. When arraigned in court, he pleaded guilty to both counts. The Appellant was convicted of both counts on his own plea of guilty. He was sentenced to imprisonment for ten (10) years on the 1st count and one (1) year in prison on the 2nd count. The two sentences were ordered to run concurrently.

The Appellant aggrieved with the sentence. He filed this appeal. His petition of appeal was based on five (5) grounds. During the hearing, he submitted that the sentence was too harsh and prayed for a lesser sentence. Ms. Kimiri for the State opposed the appeal and submitted that the sentence was lawful. The maximum sentence for the offence is life imprisonment. The injuries that were inflicted on the complainant were serious and a P3 form was produced to confirm that.

The facts of case were that on 26th of December 2012, at 3:00 a.m., the first complainant James Muigai Muiruri was walking home from a bar. He was with his girlfriend. The Appellant and three accomplices demanded to go home with the girlfriend. When the first complainant resisted, the Appellant beat the first complainant up and stabbed him on the abdomen with a knife. The second complainant James Njue Chege, was passing by and tried to assist the first complainant from the attack. The Appellant cut the second complainant's hand with a broken bottle. The complainants raised alarm. Members of the public came to their rescue. The first complainant was taken to Kiambu District Hospital, where he was admitted. A P3 form was produced in evidence. The second complainant was treated at Githunguri District Health Centre. A P3 form was produced into evidence. The Appellant was later arrested and charged.

This court is the first appellate court whose duty is to re-evaluate and re-consider the evidence, the submissions of both parties on record and come up with its own findings as stated by Court of Appeal in **Njoroge V Republic (1987) KLR 19**. In this case, the court has to determine whether the sentence imposed to the Appellant was harsh and excessive in the circumstances.

The charge sheet indicates that the appellant was charged with two offences; **grievous harm** contrary to **Section 234** of the **Penal Code** and **assault causing actual bodily harm** contrary to **Section 251** of the **Penal Code**. The punishment for those offences is, respectively, life imprisonment and five (5) years imprisonment. The facts of the case were clearly read to the Appellant and he pleaded guilty to both offences. According to the medical report, the degree of injuries sustained by the first complainant resulted in the first Appellant losing some of his bodily functions for life. The trial court therefore properly exercised its discretion in sentencing the Appellant to serve 10 (ten) years imprisonment. As regards the second complainant, the medical report proved that a major theatre procedure was carried out to repair a cut tendon. The trial court exercised its discretion when it sentenced the Appellant to serve 1 (one) year in prison.

The court however notes that in the period that the Appellant has been in prison, he has learnt his lesson. He is remorseful and vows to be a good citizen upon serving his sentence. The sentence of ten (10) years imprisonment is set aside and substituted by a sentence of this court. The Appellant shall serve seven (7) years imprisonment with effect from 2nd April 2013 when he was sentenced by the trial court. It is so ordered.

DATED AT NAIROBI THIS 4TH DAY OF JUNE 2015.

L. KIMARU

JUDGE