

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL APPEAL NO.27 OF 2015

(An Appeal arising out of the conviction and sentence of Hon. S.K. Arome - RM delivered on 19th December 2014 in Kiambu CM.C.CR. Case No.279 of 2013)

SILAS NDUNGU NGATIA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Appellant, Silas Ndungu Ngatia was charged with the offence of **causing grievous harm** contrary to **Section 234** of the **Penal Code**. The particulars of the offence were that on 9th February 2013, jointly with others not before court, at Mandizi Stage Kiamumbi Kasarani in Nairobi County, the Appellant unlawfully caused grievous harm to David Kamau Ngige. The Appellant was further charged with **assault causing actual bodily harm** contrary to **Section 251** of the **Penal Code**. The particulars of the offence were that on the same day, and in the same place, the Appellant unlawfully assaulted Peter Njuguna Mang'ono thereby occasioning him actual bodily harm. The Appellant pleaded not guilty to the charge. After full trial, the Appellant was convicted as charged on both counts. He was sentenced to serve eighteen (18) months imprisonment in respect of the first count and one (1) year imprisonment on the second count. Both sentences were ordered to run concurrently. The Appellant was aggrieved by his conviction and sentence. He filed an appeal to this court.

Although the Appellant had challenged his conviction on appeal, at the hearing of the appeal, he abandoned his appeal on conviction. Instead, the Appellant pleaded with the court to exercise leniency on him and reduce the custodial sentence that was imposed on him. He told the court that he had reformed. He had a wife with a child who depends on him. The wife does not work. He asked the court to exercise mercy on him. Ms. Aluda for the State was not opposed to the plea made by the Appellant for reduction of sentence. She was of the view that the six (6) months that the Appellant has served in prison was sufficient punishment.

When the trial magistrate sentenced the Appellant to serve the said period in prison, the court was exercising judicial discretion. This court cannot interfere with such exercise of judicial discretion unless it is established that the trial court either took into consideration wrong factors in determining the sentence or failed to take into consideration the correct factors when sentencing the Appellant. Where the sentence is manifestly excessive or exceedingly lenient, the Appellate court will interfere with the sentence. In the present appeal, it was clear that the trial court did not take into consideration the nature of the injuries suffered by the complainant before he sentenced the Appellant to the period in prison. It was clear to this court that the custodial sentence imposed on the Appellant was harsh and excessive in the circumstances.

In the premises therefore, the appeal on sentence is allowed. The Appellant has served six months in prison. This court commutes the custodial sentence of the Appellant to the period already served. The Appellant is ordered set at liberty and released from prison forthwith unless otherwise lawfully held. It is so ordered.

DATED AT NAIROBI THIS 4TH DAY OF JUNE 2015

L. KIMARU

JUDGE