REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIVASHA

HIGH COURT CRIMINAL APPEAL NO. 6 OF 2014

(Being appeal from original Conviction and Sentence in the Senior Resident Magistrate's Court at Engineer Criminal Case No. 163 of 2013)

PAUL WAINAINA KINGARA……APPELLANT

-VERSUS-

REPUBLIC……..RESPONDENT

J U D G M E N T

1. The Appellant was arraigned before the lower court charged with Grievous harm Contrary to Section 234 of the Penal Code. The particulars stated that on 19th May 2013 at Soweto Trading Centre Kahuru Area of Nyandarua County, the Appellant unlawfully did grievous harm to Edward Kuria Mwangi.

2. Following his trial he was convicted and sentenced to 20 years imprisonment. His home made petition of appeal and submissions relate to the sentence meted out. The same merely outlines various mitigatory factors. Mr. Kibelion for the Directorate of Public Prosecution submitted that the circumstances of the offence justified the sentence. He urged the court to uphold it.

3. I have considered the submissions made before me regarding the sentence. In the quintessential case of **Ogalo s/o Owuora –Vs- Republic [1954] 19 EACA 2701** the court stated as follows:

> **"(1). The Court does not alter a sentence on the mere ground that if the member of the Court had been trying the Appellant, he might have passed a somewhat different sentence, and it would not ordinarily interfere with the discretion exercised by the trial Magistrate unless it is evident that the Magistrate acted upon some wrong principles or overlooked some material factors. (See also JAMES VS REPUBLIC (1950) 10 EACA 147)**
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> **2. The trial criterion is that if the sentence is manifestly excessive in view of the circumstances of the case, the sentence will be disturbed. The Appellate Court should not interfere with the sentence of a lower Court unless it is satisfied that the same was so severe as to amount to a miscarriage of justice. (SEE NILSON VS REPUBLIC (1970) EA 599)."**

4. In the case of **Wanjema –Vs- Republic [1971] EA 493** the court held:

> **"[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 in manifestly excessive in the circumstances of the case."

5. The offence for which the Appellant was convicted carries a life sentence. The trial magistrate did not make inquiries as regards the Appellant's previous convictions if any. But he took proper note of the circumstances of the offence and especially the fact that the Appellant appeared, but for the intervention of others, determined to cause maximum injury to the complainant. Apparently the offence was unprovoked and premeditated as the Appellant had concealed the assault weapon (a panga) in his coat sleeve prior to the attack.
6. The Appellant's one-liner mitigation did not communicate any remorse or mitigatory factors. Hence the trial magistrate cannot be faulted for imposing the sentence of 20 years because the mitigation now raised in submissions was not placed before the court for consideration.

7. All this notwithstanding it is on record that the Appellant was 30 years old at the time of the offence. This and the fact that no adverse antecedents were proved against him should have been considered as extenuating factors in his favour.

8. In the circumstances the sentence of 20 years imprisonment appears harsh and excessive. I would therefore allow the appeal by interfering with the sentence to the extent that the sentence is reduced to a term of 8 years imprisonment from the date of sentence.

Delivered and signed at Naivasha, this 16th day of July, 2015.

In the presence of:-

State Counsel : Miss Gikonyo

For the Accused : N/A

C/C : Steven

Accused : Present

C. MEOLI

JUDGE