



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
CRIMINAL APPEAL NO.35 OF 2013

SAMUEL MURIITHI MUTHONI.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

From original conviction and sentence in Cr. Case No. 100 of 2012 at the Principal Magistrate's Court at Runyenjes by M. OBIERO – PM on 12TH JUNE 2013

J U D G M E N T

SAMUEL MURIITHI MUTHONI the Appellant was charged with the offence of Grievous Harm contrary to section 234 of the Penal Code.

The Particulars of the charge were as follows;

SAMUEL MUREITHI MUTHONI: On the 25th day of November 2012 at Kiringa village, Kiringa sub-location in Embu County, unlawfully did grievous harm to Robert Mureithi Njue.

1. The matter was fully heard and the Appellant convicted and sentenced to two (2) years imprisonment.
2. He was dissatisfied with the Judgment and filed this appeal. His main grounds are;
 - i. Violation of his Constitutional rights when he was held in police custody for over 24 hours.
 - ii. That the Court relied on the evidence of a single witness
 - iii. No weapon was recovered from him
 - iv. His defence was rejected
3. When the appeal came for hearing he withdrew his appeal against conviction and only argued the appeal against sentence saying he had reformed. His appeal on sentence was opposed by the State through M/s Ing'ahizu who submitted that the sentence was too lenient.
4. An evaluation of the evidence clearly places the Appellant at the *Locus quo*. He was identified by PW1 and PW2 as one of the people who beat PW1. The medical evidence by PW4 also confirmed that PW1 had suffered a fracture of the left arm (EXB1). The injury was classified as **Maim**. His defence was well considered but it did not displace the Prosecution evidence.
5. The Appellant withdrew his appeal against conviction. He is asking the Court to reduce his sentence of 2 years.
6. As clearly observed by the learned trial Magistrate while sentencing the Appellant there was no reason why the Appellant assaulted PW1. The learned trial Magistrate stated at page 14 lines 21-

25 as follows;

“I have also noted that the accused person is a first offender. However, I have considered the injuries which the accused person inflicted on the complainant’s body and I am of the opinion that the same were serious and there was no reason why the accused attacked the complainant. As such I am of the opinion the accused person does not deserve leniency. I do sentence him to serve two (2) years Imprisonment”.

The sentence for Grievous Harm is life imprisonment. The sentence of 2 years was too lenient considering the injuries he inflicted on PW1. He was lucky to have escaped with such a light sentence and he should be contented with it. The upshot is that the appeal is dismissed.

DATED AND DELIVERED AT EMBU IN OPEN COURT THIS 2ND DAY OF MAY 2014

H.I. ONG'UDI

J U D G E

In the presence of;

M/s Mbae for State

Appellant

Kirong/Mutero – C/c