

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPEAL NO. 111 OF 2013

JACTON OMONDI HAYO.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

J U D G M E N T

The appellant was charged with the offence of grievous harm contrary to section 234 of the penal code. The particulars were that between 1-6-2013 and 25-7-2013 at [particulars withheld] village in Siger sub location in Rarieda district within Siaya county unlawfully did grievous harm to C O O. He was sentenced to 10 years imprisonment hence this appeal.

The petition of appeal dated 2-10-2013 is basically composed of mitigating factors. The appellant does not essentially deny the offence but all that he is asking the court is leniency. Upon hearing the appellant as well as the respondent I ordered that I be availed the criminal report from the children officer in regard to the current status of the children as well as the probation report for the appellant.

I have perused the children officer report dated 18-6-2014 and the same is not positive on the appellant. The children are currently comfortable wherever they are. The probation officers report dated 9-6-2014 is not equally positive on behalf of the appellant. It says that the appellant has a history of violence visited upon the children and infact he was sentenced for the same offence in Bondo Criminal Case No. 49 of 2010 for one year.

Pursuant to the above history I do not fault the lower court judgment. The court infact before sentencing obtained a probation report which was not positive too. This court shall always interfere with the sentence if the same was manifestly excessive, or too low or the court took into consideration exreneous issues in the process. I do not find 10 year period excessive. The maximum period is life imprisonment. Taking into account the appellant's past history I do not think that reducing the sentence will help the appellant or the children.

Further, there is no indication that the child is undergoing suffering while the appellant is in prison. On the contrary it appears that he is doing well with the relatives. Consequently I do disallow this appeal.

Dated, signed and delivered at Kisumu this 7th day of July, 2014.

**H.K.
JUDGE**

CHEMITEI