



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT MERU**

**Hcra No.8 Of 2014**

***LESIIT, J***

**ROYD MUTEMBEI MBUTHIA.....APPELLANT**

**V E R S U S**

**REPUBLIC.....RESPONDENT**

(From the original conviction and sentence in Criminal Case No. 608 of 2012, in the Senior Resident Magistrate Court).

**JUDGMENT**

1. The Appellant was charged with one count of grievous harm contrary to section 234 of the Penal Code. He was convicted of the offence and sentenced to 6 years imprisonment. Being aggrieved by the conviction and sentence he filed this appeal. When the appeal came up for hearing the Appellant abandoned his appeal against the conviction and pursued his appeal against the sentence.
2. The grounds of Appeal are six and are namely:
  1. **That the sentence of 6 years is rather harsh and excessive as per mitigation factors adduced by the prosecution witnesses.**
  2. **That my three children had no birth certificates for reason that my identification card got lost before being arrested.**
  3. **That my wife passed away for the reason that she was suffering from HIV.**
  4. **That my children had nobody to care for them for the reason that they stay with my grandmother who is very old.**
  5. **That I am also suffering from HIV and other diseases.**
  6. **That both children and grandmother rely on me.**
3. The Appellant made oral submissions in support of his appeal. He stated that he was appealing against the sentence only. He stated that his children were suffering at home because they could not go to school without birth certificates, and that he was the only one who could obtain those

- certificates for them. He stated that he suffers from HIV and TB. He added that he was apologetic for what he did and that the victim was his father.
4. Mr. Mulochi for the state opposed the appeal. He said the offence was serious, and urged the court to dismiss this appeal.
  5. I have considered this appeal. It is an appeal against the sentence. I have considered that the Appellant was sentenced to 6 years imprisonment on the 2<sup>nd</sup> November, 2013. He has served only 6 months of the sentence. The other fact I have considered is that the victim of this offence was the father of the Appellant. The injury he suffered was on three fingers of the left hand when the Appellant cut and injured him. The three fingers had to be amputated due to the severity of the injury.
  6. The complainant was admitted in hospital for a period of 2 weeks. The P3 form was produced by a Registered Clinical Officer based at Meru South District Hospital, where the complainant was treated. According to the report, P3 form the complainant had suffered injuries on the 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> fingers and as a result of those injuries the fingers had to be amputated. The injuries were assessed as grievous harm.
  7. The Appellant was charged under section 234 of the Penal Code. A person convicted of an offence under that section is liable to be sentenced to life imprisonment. The injury inflicted upon the complainant was serious and has incapacitated him. Without three of five fingers, definitely the use of the left hand has been severely compromised.
  8. When the Appellant urged his appeal, he was more concerned about himself and his children. He made no reference to the complainant or to the offence he had committed. He only expressed remorse when prompted by the court.
  9. The Appellant is not remorseful at all for the offence and did not appear bothered of the incapacity he inflicted. Worse still, he did not seem to care that the person he injured was his own father, a person he should have respected and protected. Having spent only six months of his sentence he seems not to have learnt any lessons.
  10. I find no merit in this appeal. I confirm the sentence imposed by the learned trial magistrate. Accordingly the appeal is dismissed.

**DATED SIGNED AND DELIVERED AT MERU THIS 3<sup>RD</sup> DAY OF JULY, 2014**

**LESIT, J.**

**JUDGE**