

MARK PERSON MAWIRA.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGEMENT

The Appellant was charged and convicted with one count of Assault causing actual bodily harm contrary to section 251 of the Penal Code. He was sentenced to 3 years imprisonment. Being aggrieved by the conviction and sentence the Appellant filed this appeal. He has raised several grounds which can be summarized as follows:

(a) That the conviction was and still remains unsafe because of the materially contradictory, uncorroborated and unreliable prosecution evidence.

(b) The sentence is in any case excessive and unwarranted.

When the appeal came up for hearing Mr. Basilio Gitonga for the Appellant abandoned the appeal against the conviction and urged the appeal against sentence. In his brief submissions counsel urged that the Appellant was given a custodial sentence without an option of fine yet he was a first offender and the offence arose out of a prolonged family dispute over land. Counsel urged that the Appellant was remorseful and was urging the court to give him a non-custodial sentence.

Mr. Moses Mungai for the State opposed the Appeal. Counsel urged that the Appellant was not remorseful because when he was asked to mitigate by the trial court he said nothing. Counsel also urged that the learned trial magistrate was lenient because she awarding three years imprisonment instead of the maximum five.

I have considered this appeal. It is not disputed that the Appellant was a first offender. It is also not disputed that the circumstances surrounding the attack revolved around family disputes over land. There is no dispute that the Appellant attacked an employee of his brother with whom he had the dispute.

I have considered the circumstances of the offence and do find that the appellant vented his anger against a person who had not wronged him. The attack was not at a farm as the Appellants counsel submitted, but in a workshop. The Appellant was also armed with a panga during the attack, which aggravates the offence for which he was charged.

I have considered that the Appellant served 3 months out of the sentence of imposed against him because of being granted bail pending Appeal. He has been out on bail since November, 2009. It would be unnecessary harsh in my view to return the Appellant to serve an imprisonment sentence. Given all the circumstances of this Appeal I will allow the same, set aside the sentence of 3 years imprisonment, and in substitution thereof order the Appellant to pay a fine of Ksh.30,000/- and in default to serve six months imprisonment.

DATED, SIGNED AND DELIVERED THIS 5TH DAY OF JULY 2012

**LESIIT,J.
JUDGE.**