



REPUBLIC OF KENYA
IN THE HIGH COURT
AT KISUMU
Criminal Appeal 131 of 2011

REPUBLIC ----- PROSECUTOR

-VERSUS-

JOSEPHAT SHIULI OYWAYA ----- ACCUSED

JUDGMENT

The appellant **Josephat Shiuli Oywaya** was charged with the offence of causing grievous harm contrary to Section 234 of the Penal Code. He pleaded guilty to the offence and was convicted on his own plea and sentenced to 5 years imprisonment with an option fine of Kshs 30,000/=.

The particulars of the offence were that on the 22nd of September, 2010 at 8 am while in Lwanda Police Station within the county of vihiga the appellant unlawfully did grievous harm to one **Noah Owuor** by knocking out his tooth.

Being aggrieved by the sentence the appellant petitioned this court on appeal on the grounds that he is remorseful, and seeks for a non-custodial sentence. Having considered the petition of appeal I gather from the same that the appeal is against the sentence.

The State opposed the appeal on the grounds that the appellant pleaded guilty and the sentence is lawful.

The court asked for a prejudgment report which report did not favour the appellant. The reports states that he was uncooperative and gave wrong information which did not allow the making of the report. This in my view therefore makes it quite obvious that he is not a candidate for a non-custodial sentence. In any event the court gave him a favourable option of paying fine of Kshs 30,000/= which he failed to opt for.

However I am of the view that the 2 options given in sentencing are not in tandem, in this regard I will maintain the option of fine at Kshs 30,000/=. I will substitute the jail term of 5 years with 2 years imprisonment.

DATED AND DELIVERED THIS 6TH DAY OF JULY, 2012.

ALI-ARONI

JUDGE

In the presence of:

..... for State

..... Accused person(s) present